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International Court of Justice

H0213-0002

Official Transcript of the International Military Tribunal in the matter of The United States of American, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 26 August, 1946, 1000-1700, Lord Justice Lawrence presiding.

COL. POKROVSKY: Mr. President, would you allow me to inform the Tribunal that in conformity with the ruling of the Tribunal dated 12 August of this year, the ruling which took place in the morning session concerning the witness Schreiber, this witness is now in Nurnberg and is here and can be examined today or at any other time, in conformity with the decision of the Tribunal.

THE PRESIDENT: Colonel Pokrovsky, could he be examined now, at once?

COL. POKROVSKY: He could be examined at once.

THE PRESIDENT: I think that would be the most convenient, before we go on with the organizations' speeches.

COL. POKROVSKY: Very well, Mr. President, General Alexandrov will therefore examine him at once.

DR. LATERNSER (Counsel for the General Staff and OKW): Mr. President, I object to the examination of this witness for the following reasons: for the trial of the organizations it was decided by the Court that all witnesses had to be examined before the Commission. What is valid for the defense must, according to general legal principles, be valid for the Prosecution as well. For these reasons the examination of this witness is inadmissible.

THE PRESIDENT: I have before me the order of the Court of the 12th of August, 1946, which is in these terms:

"With reference to the objection of Dr. Laternser to the use of the statement made by Major General Walter Schreiber, the Tribunal is not inclined to admit any evidence so late as this, or to reopen questions which have been gone into fully before the Tribunal; but on the other hand, in view of the importance of the statement of Major General Schreiber and its particular relevance not only to the case of certain of the individual defendants but also to the case of the High Command, the Tribunal will allow General Schreiber to be heard as a witness if he is produced before the end of the hearing of the

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case. Otherwise no use can be made of this statement."

Dr. Laternser's present objection is, therefore, overruled.

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WALTER SCHREIBER, a witness, took the stand and testified as follows:

BY THE PRESIDENT:

Q. Will you state your full name, please?

A. Walter Schreiber.

Q. Will you repeat this oath after me:

I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

THE PRESIDENT: You may sit down.

BY GENERAL ALEXANDROV:

Q. Witness, will you kindly inform the Tribunal of the short details about yourself, about your career, about your education, and your activities?

A. I am 53 years, was born in Berlin, and am a professor of medicine. My medical studies were at the Universities of Berlin, Tuebingen, and Greizwals. I passed the state medical examination at Greizwald in 1920. I received a certificate and was made a doctor of medicine.

In 1940 I became instructor of Hygiene and bacteriology at the University of Berlin; in 1942 professor at the Military Medical Academy. I have been an active military doctor since 1921. I have been in various positions as a garrison doctor, and a divisional doctor since 1929, however only in scientific activity as a Hygienist and bacteriologist.

My scientific and pedagogical work was at the Universities of Berlin and Freiburg in Breisgau. After 1929 I was first in Freiburg, later hygienist at the Wehrkrieskommando in Berlin, and finally during the Second World War hygienist and bacterologist at the headquarters of the Supreme Command of the Army. I was afterwards section chief in the High Command of the Army for science and health in the Army Medical Inspectorate, and lastly head of Wehrgruppe C of the Military Medical Academy. In this capacity I was in charge of the

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scientific institute of the academy in Berlin.

Q. What was the last rank that you occupied in the German Army, and when was it?

A. I was Generalarzt -- that is major general -- of the medical service. My last position was that of the directing doctor for the military and civilian sector of Berlin, but only from the 20th of the 30th of April, 1945.

Q. Under what circumstances were you taken into captivity by the Soviet Army?

A. On the 30th of April, I was in a large hospital in the air-raid shelter at the Reichstag building in Berlin. Since most of the city of Berlin was already in the hands of the Russian troops, I had no more real directing work. As a result I opened a large hospital there and took care of several hundred wounded.

Q. You are now going to be shown your statement, dated the 10th of April 1946, which is addressed by you to the Soviet Government.

(A document was handed to the witness.)

BY GENERAL ALEXANDROV:

Q. Do you remember that statement?

THE PRESIDENT: Wait a minute.

THE WITNESS: Yes; that is a report --

THE PRESIDENT: Wait a minute.

General Alexandrov, the Tribunal would prefer that you should get the evidence orally and not by a document. Therefore, if you question him upon the subjects which are contained in it --

GENERAL ALEXANDROV: Mr. President --

THE PRESIDENT (Interposing): Wait a moment.

GENERAL ALEXANDROV (Continuing): That is what I was going to do.

THE PRESIDENT: Yes. General, the Tribunal would prefer that you get the evidence from the witness and do not use the document. Go on.

GEN. ALEXANDROV: That is what I want to do, Mr. President, but I just wish to have the witness tell us of a few circumstances in connection with this document.

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THE PRESIDENT: Very well.

GENERAL ALEXANDROV: The substance will be obtained orally from the witness.

BY GENERAL ALEXANDROV:

Q. Do you confirm the facts set forth in that statement?

A. Yes, I confirm them.

Q. What was the reason for your making the statement to the Soviet Government?

A. In the Second World War, things occurred on the German side which were against the old laws of medical ethics. In the interests of the German

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people, the medical science of Germany, and the training of the younger generation of doctors in the future, I consider a thorough approach necessary. The matters in question are the preparations of bacteriological warfare causing epidemics and experiments on human beings.

Q Why did you address yourself with the statement only on the 10th of April 1946 to the Soviet Government, and not before that date?

A I had to wait and see whether before that time the question of bacteriological warfare might come up for discussion. When that did not occur, I decided to make this statement in April.

Q How, then, since you were a prisoner of war, did you have the opportunity of following the trial at Nuernberg?

A In the prison camp newspapers came from Germany, and were laid out in the club room. In addition, there was the information for prisoners of war printed in Soviet Russia which reported regularly on the trial.

Q Witness, will you kindly tell us what you know about the preparation on the part of the German leadership in connection with bacteriological warfare?

A In July 1943, the High Command of the Wehrmacht called a secret conference at which I as representative of the Army Medical Inspectorate took part. This conference took place in the rooms of the general Wehrmacht office in Berlin, in Bendler Strasse. The chief of staff of the general Wehrmacht Office, a colonel, was in charge of the meeting. I do not recall the name of this colonel. The colonel said by way of introduction that as a result of the war situation, with reference to the question of the utilization of bacteria as a weapon in warfare the High Command authorities now had to take a different point of view from that of the Army Medical Inspectorate, which had been held up to that time.

As a result, the Fuehrer, Adolf Hitler, had entrusted Reich Marshal Hermann Goering with the direction of carrying out all preparations for bacteriological warfare, and had given him the necessary powers.

A bacteriological warfare group was formed at this meeting. The members of this group were essentially the same gentlemen who had been taking part at the conference; that is, Ministerial Director Professor Schuhmann of the science section of the Army Armaments Office; Ministerial Director Stantin of

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the Army Armaments Office, Weapons Examination Section; Veterinary General Professor Richter, as representative of the Veterinary Inspectorate; and from the Army Medical Inspectorate, Oberstaatsarzt Professor Kliev, only as an observer, however.

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In addition, there was a staff officer of the Luftwaffe as representative of the High Command, a staff officer of the Armament's Office and a representative of the Weapon's Office. There was a zoologist and a botanist but I do not know the names of these gentlemen.

At this secret conference it was said that an Institute was to be created at which bacterial cultures were to be produced on a large scale, and scientific experiments were to be carried on to examine the possibilities of employment of bacterias which could be used against animals and plants, which were also to be examined and made available as they were practicable. That, exactly, are the contents of the conference in July, 1943.

Q And what took place after that? What do you know about that?

A A few days later, I learned from the Chief of Staff of the Army Medical Inspectorate, Generalarzt Schmidtbruecken, who was my direct superior, that Reich Marshal Goering had told the Deputy Reich doctor Blome that he had appointed him to carry out the work, and had told him that the Institute in or near Posen was to be established as quickly as possible. At this Institute in Posen, Ministerialrat Schuhmann was active, and Ministerialrat Stantin, and a number of other doctor scientists whom I do not know. I myself reported a few days later to the Chief of Staff in the Army Medical Inspectorate, Professor Handloser. He was in Berlin at the time.

Q And what do you know about experiments which were being carried out in this connection and in order to have the preparation of bacteriological warfare?

A Experiments were carried on at the Institute in Posen. I do not know about them. I know only that spraying attempts from planes with bacteria were experimented with, and that insects harmful to plants were experimented with, but I cannot give details. I did not experiment with it myself and do not know the details.

Q You testified to the fact that the first secret meeting

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consecrated to these questions took place under the chairmanship of a colonel belonging to the OKW. On the order of whom and in the name of whom did he do so?

A In the name of Field Marshal Keitel and the chief of the German Wehrmacht Office, General Reinecke.

Q Who ordered you to take part in this meeting?

A The Chief of Staff, Generalarzt Schmidtbruecken assigned me.

Q Was the General Staff of the Armed Forces informed of the measures which were being taken in order to prepare bacteriological warfare?

A I assumed so, for Oberstabsarzt Handloser, the medical chief whom I informed of the contents of the conference was, in his capacity as Army doctor, that is, as supreme medical officer of the Army, directly subordinate to the chief of the Army and had to report to him about it.

Q What do you know about the participation of the defendant Jodl in the preparation of these measures?

A I know nothing about any participation of Colonel-General Jodl.

Q Will you kindly tell us what the reason was for the decision of the Supreme Command in the preparation of the bacteriological warfare?

A That was, as seen by the words of the man presiding at that secret conference, the defeat at Stalingrad which, in contrast to the fighting at Moscow in the winter of 1941 to 1942 was a severe blow for Germany. First, a re-evaluation of the situation, and consequently, no decision. It was no doubt considered whether new weapons could be used with which the issue of the war could still be turned to an advantage.

Q How do you explain that the German Supreme Command did not put into effect their plans for the waging of a bacteriological war?

A The High Command probably did not carry out their plans

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for the following reasons. In March, 1945, I was visited at my office at the Military Medical Academy by Professor Blome. He came from Posen and was quite excited. He asked me whether I could put he and his men up in the laboratories at Sachsenburg so that they could continue their work there; he had been forced out of his Institute at Posen by the advance of the Russian Army; he had to flee from the Institute; he was not even able to blow it up; he was quite worried that the arrangements for human experiments which were at this Institute and which were recogniz able as such might be recognized by the Russians; he had tried to have the Institute destroyed by a Stuka bomb but that was not possible and now he asked me to see to it that he and his best cultures which he had saved be permitted to continue working at Sachsenburg.

I told Mr. Blome that Sachsenburg was no longer under my command and for that reason I could not give him that approval, and referred him to the Chief of the Medical Army System, General Handloser. The next day General Handloser called me up and said that Blome had come to him and had an order from the Commander of the replacement army, Himmler, and that on the basis of this order he was unfortunately compelled to give Blome a place to work in the Sachsenburg. I took note of this byt I had nothing more to do with it. Thus Mr. Blome had been thrown out of the Posen Institute. The work of such an Institute must be very difficult.

If one wants to cultivate an epidemic on a large scale, one must have a laboratory with appropriate precautionary measures. The personnel must be trained and must have practiced, for a German even, an expert bacteriologist has no experience with plague cultures. That takes time, and so the Posen affair had to be continued, then only a considerable time later. Now it had suffered a severe blow; now it was to begin work at Sachsenburg. In his visit to me, Mr. Blome told me that he could continue his work at another laboratory in Thuringia, but that this was not yet completed.

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that it would take a few days,or even a few weeks to finish it, and that he had to have shelter until then. In addition, if the spreading of the plague was to be used when the military operations were so near the borders of Germany, when the units of the Red Army were already on German soil, of course, special protection for the troops and the civilian population had to be considered. A serum had to be produced. This again took time; and as a result of all these delays the affair was never put into effect.

Q. Witness, will you kindly tell us now what you know about the illegal experiments carried out on human beings by German doctors ? I would ask you to testify very shortly as to these questions because they have been sufficiently gone into before in the trial.

A. Officially I learned of a few things. In 1943, I believe it was in October, at the Military Medical Academy, we had a scientific meeting of qualified doctors, so-called advistory doctors, and with the staff of the bacteriologists which included about 30 gentlemen; and Obersturmbannfuehrer Dr. Dring made a speech on the examination of typhus vaccine. The speech indicated that this Dr. Ding had, in the Buchenwald Concentration Camp, inoculated prisoners with avrious vaccines against typhus. After sometime, I don't know how long it was, he had artificially infected them with typhus by infected lice which were infected with typhus, and from that he determined whether these people contracted typhus or not, he drew conclusions on the value of the vaccine. Since vaccines of various qualities were examined, there were cases of death.

Q. Now, what were the scientific value of the experiments carried out by this Dr. Ding ?

A. In my opinion they had no scientific value at all. In the course of the war, we had empirically made many gains in this field, collected a great deal of experience. We knew our vaccines very well, and there was no need of such examinations. A number of the vaccines which Ding examined were not used at all in the Wehrmacht, they'd be rejected.

Q. Please continue, please continue.

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A. A second affair of which I received official notice was the following: The head of the hospitial in Hohen[illegible]chen, SS-Gruppenfuehrer Professor Gebhardt a talented surgeon, had carried out head operations on Russian prisoners of war and had killed the prisoners at certain intervals in order to observe the pathological changes, the progress of the bone changes on the basis of trepidation, the results of the operations, and so forth. In the third place here in Nurnberg, I participated in a scientific meeting carried out by the High Command of the Luftwaffe.

Q. When did this take place ?

A. The meeting was in 1943, I cannot say exactly when it was. I believe in the Fall of '43,-- it may have been in the Summer. At this meeting which was held in the hotel by the railroad station, two doctors, Dr. Cramer and Professor Hoelzldemner, director of the physiological institute at the University of Kiel, reported on experiments which they had carried out on behalf of the High Command of the Luftwaffe in Dachau on the inmates of the concentration c The purpose of the experiments was to create the basis for the production of a new productive uniform for flyers. In the Channel, numerous German planes had been shot down and had, in a short time, found their death in the cold water before the rescue plan could reach them. Now, a suit was to be made which would in some way have an insulating effect, protect the body against cold. For this purpose the persons, during the experiments, had to be put in water of varying temperatures -- I don't know exactly what all the temperatur were; and it was established how the curve of the fall of body temperature was, and where the border is between life and death, at what temperature, and the subjects of the experiments had on various suits. The ordinary ones which were used at that time and other ones. I recall one special suit which developed a foam between the suit and the skin, that is, a layer of air which has a strong insulating effect, and death could be postponed for a considerab time by this suit. Of course, in these experiments which were undertaken under narcosis, a number of subjects lost their lives.

Q. Please tell us what connection the Defendant Goering had to the experiments carried out at Dachau ?

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A. Dr. Kramer said at the beginning of his speech that defendant Goering had ordered these experiments, and that the Reichsfuehrer SS Himmler had kindly made available the subjects for the experiments.

Q. But you yourself do admit the possibility that similar experiments could be carried out without the knowledge of the defendant Goering.

A. I cannot imagine that.

GENERAL ALEXANDROV: Mr. President, I have no further questions to put to this witness.

CROSS EXAMINATION

BY DR. LATERNSER:

Q. Witness, you were in a Russian Prisoner-of-War Camp ?

A. Yes.

Q. Where ?

A. Near Moscow.

Q. Did you hold any office in this camp ?

A. No. I held no office in the prisoner-of-war camp.

Q. How did it come about that you made your statement on the 10th of April did you yourself take the initiative or were you asked to do so ?

A. I myself took the initiative when here in Nurnberg I heard the report of Kramer and Hoelzloehner. I was deeply shocked about the perversion on the part of the German doctors. For that reason, I spoke to Professor Handloser who shared my opinion, and when more and more such things were reported in the papers, I considered it my duty -- I refer to what I said before-- in the interest of the future of the medical profession, I considered it my duty to clear these things up once and for all.

Q. What did you learn about such things ?

A. What I said before.

Q. No, I mean what you learned in the prisoner-of-war camp .

A. From the papers which we received.

Q. What did you learn from the papers ?

A. I learned --

Q. One, moment, Witness. Do you have a piece of paper before you ?

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A. Yes.

Q. What does it say ?

A. "You can speak faster."

Q. One question : Your testimony in answer to the questions fo the Russian Prosecutor today, was it prepared ?

A. I was examined, and what I said is in this statement.

Q. I ask you, Witness, whether before the examination today, you were orientated by the Russian Examiner on what you were to testify to ? Was your testimony previously determined ?

A. No, but that I would speak about bacteriological warfare and experiments on human beings, that I knew.

Q. Now, to the statement; you have the statement before you ?

A. Yes, here it is.

Q. At the end of that statement there is a note. Would you please look at it ?

A. Yes.

Q. Was this note put on this document in your presence ?

A. No, I received this document here in this room a little while ago.

Q. And something else, was your signature on the original certified ? Or did you send off the original before this note at the end was put on which is at the end now ?

A. I gave my statement. No note was written on it in my presence.

Q. Was any advantage promised to you for making this report ?

A. No, you know that.

Q. I do not know. That is why I asked you.

A. No.

Q. Was there, at any time, in the German Army Medical Service, fear that the Soviet Union might use bacteria as a means of combat ?

A. Not in the Army Medical Inspectorate, but in the General Staff. In 1942, the General Staff inquired of the Army Medical Inspectorate whether the use of bacteria, as a weapon, might be expected by the enemy in the East. I, myself, wrote the answer. On the basis of intelligence reports, and the reports of the army doctors from the eastern front, and from the epidemic situation of our troops, we could give a negative answer to this fear. That was in 1942. The answer was prepared by me and signed by General Handloser. In 1939, a similar statement, which was worked out more or less to the same effect, wassigned by the General Physician, Dr. Waltman.

Q. In 1943, after Stalingrad, an order for the preparation of this bacteriological warfare against Russia was issued. Do you know who issued the order to prepare this warfare ? I ask you, do you know who issued this order ? It is a clear question. I ask you to answer it equally clearly.

A. It was not said at the conference who issued it.

Q. You do not know who issued the order ?

A. No.

Q. Then, you do not know or do you know the exact contents of the order ?

A. No. I did not receive any written order. The Chief of Staff of the General Wehrmacht Office said that the Reichsmarshal had been entrusted by the Fuehrer with the powers and so forth, to carry out all the preparations.

Q. And what you said about it is hearsay. You do not knowit yourself ?

A. It was said officially at the conference. Of course it is not hearsay At an official conference, we who were assembled there were told that.

Q. When you were told that at this conference, what was your capacity ?

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A. I was a representative of the Army Medical Inspectorate.

Q. When this suggestion was made knonw, what did you do, you yourself ?

A. I pointed out that bacteria were an unreliable and dangerous weapon. I did nothing else.

Q. You were an expert. Since 1942 you had been a professor ?

A. Yes.

Q. And you said nothing else ?

A. No, nothing else.

Q. Why did you not say anything else ?

A. Because we were facing a 'fait accompli'.

Q. You were told it was only to be discussed ?

A. We were told it was not to be discussed. We were told, "This situation has been decided. This decision has been made".

Q. But it was an accomplished fact only if this bacteria were actually used. The preparations were merely to begin. A strong objection by a professor in his high position might have had some effect, it might have changed this ?

A. According to our experience, nothing could be done against such a decision. I pointed out that it was a dangerous and unreliable weapon.

Q. You could have stood up and made some strong protest ?

A. It would have been better if I had done it.

Q. That is enough on that point. The working group was to meet once a month in the rooms of the General Wehrmacht Office in Berlin. Do you know how many meetings took place ?

A. No. I cannot say.

Q. Do you know when the last meeting was ?

A. I cannot say that either.

Q. Were any meetings held ?

A. Yes. Meetings were held.

Q. Do you know whether there are records of these meetings ?

A. I assume so, certainly. Professor Klieve from time to time informed me

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Q. Did you yourself, belong to this working group ?

A. No.

Q. When and in what way did Professor Blome receive powers from Goering to carry out the immediate practical tasks of the preparation ?

A. Immediately after this conference, perhaps even on the same day or previously for at the conference, Blome was mentioned, although it was said he was just proposed. However, two years later, I was told Blome was appointed.

Q. And how do you know that ?

A. From my direct superior, Generalarzt Schmidtbruecken.

Q. At what time did the spraying experiments from airplanes take place ?

A. I cannot say;

Q. What do you know about these experiments ?

A. The following: Bacterial emulsions were pathogenic bacterial which could be easily found when sprayed from planes on an experimental field close to the Institute at Posen.

Q. Did you, yourself, see such experiments ?

A. No.

Q. How do you know that these experiments took place ?

A. Klieve spoke to me about these spraying experiments and said to me that first a dye had been taken which had more or less the same specific weight as a bacterial emulsion, in order to test the dye, and then experiment with bacteria.

Q. Did Klieve see these experiments himself ?

A. I believe so.

Q. You cannot say for sure ?

A. I would not like to swear to it, but it is very very probably.

Q. You say that at this conference in July 1943, that a colonel was acting for Fieldmarshall Keitel and General Reinecke ?

A. Yes.

Q. How do you know that ?

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A. I personally reported to General Handloser, and Handloser expressed his opinion about the matter to me. It was an extremely dangerous matter for us doctors if it actually came about, if a plague epidemic came into existence. The plague epidemic would not stop at the border, but it would come over to our side. We had to bear a very great responsibility.

Q. You have deviated a little. We will come back to this point. I wanted to know whether you can give any facts to prove that the High Command of the Army was informed ?

A. No. I cannot.

Q. It is a pure assumption, then ?

A. Yes. But it is quite obvious --

Q. Whether it is obvious or not, I want to know whether you know of any facts ?

A. No, I cannot give any facts.

Q. To whom was Professor Handloser subordinate ?

A. He had a triple relationship. He was Chief of the Wehrmacht Medical System, and in that capacity, he was under Fieldmarshal Keitel of the OKW. He was Army Medical Inspector; in this capacity, he was under the command of the Replacement Army under Generaloberst Fromm, and later Himmler and Jeuttner.

Q. You were also questioned about the reasons why this bacteriological warfare was not carried out. What reasons did you learn of positively ?

A. The head of the Institute at Posen, Professor Blome reported this to me when he visited me. He expressed his plight.

Q. Do you, yourself, know whether a military Command Authority gave the positive order that this bacteriological warfare was not only to be prepared but was also to be carriedout ?

A. No, I did not see that order.

Q. Then this was merely preparation --

A. Preparation of bacteriological warfare was what I said.

Q. As a high-placed General, did you, yourself, speak about this bacteriological warfare ?

A. No.

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Q. Do you know from your own knowledge whether any high-placed General knew of these intentions ? I am asking you whether you know it ?

A. I was not therewhen a General was informed about it.

Q. Then you do not know.

A. No.

Q. Do you know how far apart the enemy troops and our troops were ?

A. That differed a great deal.

Q. What was the normal distance ?

A. I am not a front soldier. I would not lime to speak on a subject of which I know nothing.

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Q We will assume that the enemy troops were normally 600 to 1,000 meters from our own troops. Would you, as a doctor, consider the employment of plague bacteria safe and not dangerous for our own troops?

A Completely independently of the distance, I would consider the employment of plage bacteria always dangerous.

Q Well, assume that such a devilish thought, actually to use bacteria, actually existed. Would that not have meant an enormous danger for our troops?

A Not only fo the troops, for the whole German people; the refugees were moving from east to west. The plague would have spread with immense speed.

THE PRESIDENT: It is useless to ask the same question over again. The witness has already said so.

BY DR. LATERNSER:

Q May that not have been one of the reasons why this warfare was not used?

A According to the statements which Mr. Blome, the head of the intitute and deputy of the Reichsmarshal, made to me, no. He was, with all his energy, trying to cultivate his cultures somewhere else.

DR. LATERNSER: Mr. President, may I ask for the recess now and ask a few more questions of the witness later?

THE PRESIDENT: No, Dr. Laternser, the Tribunal thinks you should finish now.

BY DR. LATERNSER:

Q You say, on page 7 of your written statement, that in Norway 400 Jugoslav prisoners of war were shot because an epidemic had broken out among them. You say that this was a labour camp of the Waffen SS.

THE PRESIDENT: Go on.

Q This incident was reported to you?

A Yes.

Q Did you report it to your superior?

A Yes/

Q What was done?

A A letter was immediately sent to the Reich Physician SS and Police, Professor Grawitz, and through these official channels the affair was reported to the office which was the supervisory agency for this camp.

Q Do you know whether any juridicial steps were taken?

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A I do not know of the proceedings of the SS courts; I do not know.

Q Then you write on Page 7: Especially terrible treatment was given to the Russian prisoners of war by the High Command of the Wehrmacht, . Then you write that the Russian prisoners of war were given inadequate food.

A Yes.

Q Now I ask you, when were those observations of the inadequate food made, immediately after the capture in the reception camps behind the front or in prison camps in Germany?

A I am not speaking of events immediately after the action in the reception camps. There, even with the best intentions, the state which has taken the prisoners is not always able to care for them as would be necessary. I am speaking of a later period when the prisoners had been for weeks in the hands of the Germans and I am speaking of camps which were in the Baltic countries. They were not taken to Germany. The Russian prisoners were brought to Germany only later. The conditions in these camps were extremely poor.

Q Were these poor conditions due to bad intentions?

A I assume that these conditions were due to basic ideological questions.

THE PRESIDENT: Dr. Laternser, the Tribunal did not allow the statement to be put in and you are now cross examining upon a subject which is totally distinct from the subjects upon which the witness has given evidence.

DR. LATERNSER: These statements are in the written declaration of the witness

THE PRESIDENT: Well, you must have heard that we did not allow the written statement to be put in as evidence. We asked that the witness should be examined orally and he was examined orally and the written statement is not yet in evidence

BY DR. LATERNSER:

Q I have one more question, Witness. Your objections against this bacteriological warfare, did you ever write them down?

A Yes, in the memorandum which I mentioned before.

Q When did you make this statement?

A In '42, --

Q Now, that is enough. The conference took place in July, '43. Did you express your opinion on this point in writing afterwards?

A No, I did not write anything down.

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Q Did your superior, after you reported to him, write down his objections?

A Not that I know of. General Handloser was in the headquarters and I in Berlin. He came once a week or once every two weeks, we reported to him, and then he went back to the headquarters.

DR. LATERNSER: I have no further questions.

THE PRESIDENT: The Tribunal will adjourn.

(A recess was taken.)

Take 7. Ninabuck.

THE PRESIDENT: Before we continue I will deal with three applications. First of all, the application of Dr. Kaufmann of the 20th of August, 1946. It appears originally to have been dated the 15th of August. That application will be granted, and an affidavit by the witness Panzinger may be put in evidence, provided it is put in evidence before the end of the trial.

With reference to the application by Dr. Pelckmann dated originally the 22nd of August, 1946, the applicationsis denied.

The two applications by Dr. Dix dated the 20th and the 21st of August, both applications are denied.

Now, is there any further cross examination on behalf of the Defense?

Does the Soviet desire to reexamine?

COLONEL POKROVSKY: The questioning on the part of the Soviet Prosecution has been exhausted, Mr. President. We have no more questions.

THE PRESIDENT: The witness may retire.

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THE PRESIDENT: Now, Dr. Pelckmann.

DR. PELCKMANN: First, I should like to make reference to two points. In the letter of the 23rd of August I had announced that my plea cannot be translated. Secondly, I should like to recall to the attention of the Tribunal that the--

THE PRESIDENT: Sixty pages of it have already been translated, I understand.

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DR. PELCKMANN: Yes. The French translation, however, has not been made yet; and furthermore I beg to point out to the Tribunal that concerning the answers to the questionnaire which I have sent to the witness Rauschnigg, these answers have not been received yet.

Your Lordship and gentlemen of the Tribunal, when, on the 27th of February, 1933, the German Reichstag was consumed by fire, the Nazis willed that out of those flames the thousand years of the Third Reich should be born. When, a little more than twelve years later, all of Germany was drowned in an ocean of flames, that Reich vanished into rubble and ruins.

Both of those historic events were followed by trials. Their meaning was and is to determine those responsible for those two crimes of human history.

The Germans Supreme Court did not solve that task. It is true that it acquitted with remarkable braveness, as Mr. Jackson has stated, the indicted Communists, but it failed to determine and certainly to sentence those who were really guilty, who hired the unfortunate tool, van der Lubbe, and who performed the deed with him. Thus, under the impact of public opinion, the truth has been muzzled and has been concealed by the Nazi Government. Formal justice has been satisfied. The culprit had been sentenced, but that Divine power, Truth, and the deepest human insight -- they remained hidden. They alone would have been able to open the eyes of the German people at that time and had the power to hold it back from the abyss.

Now this high Tribunal, this Court of the World, faces the task of passing judgment. Whose guilt was that world conflagration? Who was responsible for the destruction of foreign lands and finally for the infernal downfall of our German Fatherland? And again there exists the danger that this Court too should pass merely a formal verdict, naming guilty ones -- but that the deepest and last truth should remain hidden by the power of psychosis which, in accordance with the law of psychology and psycho-analysis, would be the natural consequence of the many

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years of struggle between the Hitler regime and the free peoples of the world.

Will this Tribunal be in a position to save, by its verdict, Germany and all the world, from an abyss deeper and more horrible than anything experienced before?

This trial is a criminal trial. It is truly the greatest as far as the number of defendants and people concerned, and above all, the most important which ever was recorded by legal history, -- but yet, in all its characteristics, a typical criminal trial. Therefore, it followed that Anglo Saxon legal principle which governed the Charter, which was reaffirmed during the public proceedings, that the prosecution had to collect and to present only those factors which could discriminate, never those that could excuse the accused. Effectively, the prosecution is supported by the mass psychosis to which all the witnesses of the greatest "cause celebre" of world history are subject, for reasons which international scientists, particularly le Bon, have given in detail. Openly and cheerfully I confess that in the course of the defense which I conducted, I did not use the corresponding principle of painting black on white. I too was endangered by the possible mass suggestion exerted by those hundreds of thousands of voices which reached me from the internment camps, and I was tempted to defend at any price, -- losing by that, that basis of facts, as they actually were. This result shows already the dangerous reaction brought about by such a mass accusation and its political consequences.

I am most thoroughly convinced that by such black on white painting the high Tribunal would have been betrayed in its search for the real truth. I did not see my task in doing so, although the principles of the charter would have given me the right of doing so. In such a trial, concerned with the very basis of humanity, with the demonstration of innocence and guilt, with the fate of the German people and the future of the world, it cannot be left to the cleverness of methods in the contradicting use of

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prosecution and defense to expect the Tribunal to decide that the truth might be situated in between. It could not be the task of the defense to gain tactical successes by emphasizing the one and suppressing the other complex - nay, incorruptibly we have to find clarity, - 'Clarte', as demanded by the fanatic seeker for truth, Henry Barbusse. That is the rule in accordance with which I selected my witnesses - I particularly remind you of Reinecke and Morgen, the evidence of whom I shall evaluate later.

It was my endeavor to assist the Tribunal in ascertaining the historic truth.

By doing so I was guided by the simple and therefore beautiful German medieval proverb, "Those things that happened cannot be reversed."

That word means not only the tragic nature of all that occurred based on the impossibility to reverse it, - there is even a deeper sense in it:

Past events do not stand nor tolerate a retrospective study; that means no deed can correctly be grasped and understood if speculated upon ex post. No, one has to look at it as it offered itself to the contemporaries at the time of its performance, from the beginning to the end.

One has to examine all circumstances surrounding the deed and the person who accomplished it as well as the psychological situation at the time of its performance. The judges must familiarize themselves most thoroughly with the personality of the perpetrator to judge the extent of his guilt.

This is equally true for this trial. Nations judge another nation; the family of peoples judges one people which has brought deep suffering to the world, a state which has committed crimes against humanity. In the organizations there have been indicted

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huge units, large sectors of the German people have been put on the dock, and therefore it seems necessary that the judges of these millions of people acquaint themselves most thoroughly with the lives, the knowledge, the hopes and beliefs of these masses at the very moment when the ideas and accomplishments of National Socialism were effective and its criminal excesses were beginning. Hence, the judges of the four largest, and for the decision of this world war most important nationas of all the world, will have to make the attempt to decide - just as in the case before any normal jury - "How did it come that the deed was performed? ? In what situation did the defendants find themselves at that time? Which speculations and sentiments did drive them to commit the act? Did they have at all the intention of doing anything illegal? Is it possible that they themselves were deceived? Were they at all able to recognize the illegal nature of their doing - and if they learned of it only gradually-- were they in a position to adjust their action in accordance with that insight?" It is extremely difficult even for the judge in a normal trial to free himself from the ex post reflection and to evaluate correctly the circumstances of the deed, the milieu of the deed, and the personality of the one who performed it. How exorbitant are the demands for justic put before the judge when he has to judge people who have transgresses just against his, the judge's family. Every nation contributing to this jury has suffered tremendous damages by the crimes of the Nazi regime for which millions of members of the organizations have to account now. But in accordance with the statements made by Justice Jackson in his opening speech, I venture to hope that you, High Tribunal, will succeed in performing this titanic undertaking to be free of feelings of revenge and rather to seek justice and nothing but justice. Will you, as non-Germans, who have not personally lived through the unique historic phenomena of a mass-psychosis and a tyranny of continental extent,-- Can you be able at all to grasp and to explain to yourself how something of that kind could happen? Can you imagine that crimes were not committed, that they were not consciously supported by them that is, the masses,-- nay, not even known by them?

The Charter rightly stated that the Tribunal acted accordingly; that it could not be the task of this court to ascertain which inner causes had led to this war, with or without justification. The decisive question is only: Was it an aggressive war? Nevertheless, even in the case of the individual defendants, proof was

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admitted as to how the historic development physchologically conducted them since the first World War to this new murder of nations. With even far greater justification one has to demand that in the case of establishing the guilt and the crimes of the organizations just in their very beginnings, one should know the historical background, the political total situation in and around German. The masses have no clear thoughts or sentiments. They are moved by dark emotio emanations of a phenomenon which the acientists have called "mass-soul". It is formed by the pictures and promises offered by their leaders.

One of the prosecutors in his final plea against the individual defendants stressed how gigantic their guilt and the consequences of their acts could bec just by the clever use of the masses, by seducing the very sould of the peopl by the glistening magic of slogans and the promise of an utopian development. Is not these very words give the best proof for the fact that the masses of membe desired only the goo and the non-criminal?

Already in its very beginnings, even before 1933, the principles of the SS were identical with the program of the NSDAP. Not only before this Tribunal one has discussed the question whether that program and the means ans methods of it realization were criminal. This problem concerned the public, the authorities o the German Republic, and the best heads and hearts of our people throughout man years before 1933. Were it motives of a criminal nature when the masses follow our politicians, who did not promise them easy plundering expeditions at home a abroad, but rather work and bread, when they rallied them to national unity as contrasted to the pellmell of a parliamentary system scorned by forty-one parti a democracy which killed itself by weakness and half measures?

It is the German people's deep tragedy that it could not sublimate its insight, that it came late when the fortunes of the world were distributed by strengthen and improving its recognized position in the world of intellect and applied sciences. The German is a romantic - particularly in the field of politics. This romanticism circles around vague concepts of fate and doom and the dream of anc power in the "Holy Roman Empire of Germans" of a thousand years ago. This belief in destiny has been supported by an absolutely incorrect discription of German history for more than a hundred years and therefore

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one needed only a skillful sorcerer who again sent millions of German youth into death and destruction by suppressing the real facts.

But the great seducer, Hitler, had not gone so far yet.

At first, the protestations of peaceful intentions domestically were more important than those taught foreign countries which did not yet matter. Due to the fault of all large political parties and their armies, as well as the weakness of the republican administration, the inner political life had changed to an ever-increasing degree into a real state of war in the streets. Nevertheless, the secret parliamentary elections were carried through without terror or deceit. Through these elections the citizen could observe a steady increase of strength of the extreme parties of the Right and of the Left. He could not consider it a crime to join the extreme party of the Right, the NSDAP, or its SS, who in contrast to the SA, which ruled the streets, mainly was concerned with the protection of the speakers during the fraternal warfare carried on among the political adversaries of those days.

Every German who lived through those days knows with what tension the problem was discussed, whether the NSDAP and its formations planned any undertakings which had the character of high treason, or which aimed at the revolutionary change of the government. In 1923, in the early days of the party, Hitler had attempted a coup d'etat which had failed. Now, since, many years, he advocated "legality". When in September 1930, three young officers of the 100,000 men army were indicted before the German Supreme Court for treasonable activities by having planned national-socialist cells in the army, Hitler as a witness testified under oath that his revolution was one of the spirit and that he aimed to seize power by legal means. This news went through all papers in bold lines and in that manner, it entered both the heads of the enemies and the followers of Hitler. Dr. Kempner, then Oberregierungsrat in the Prussian Ministry of the Interior, now a member of the American Prosecution, was one of the few who considered that oath perjury. He submitted to his Ministry a detailed report, concluding that the NSDAP was guilty of high treason.

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But even that seeker of truth had to admit in this description of the situation as it existed then (Volume XIII, No. 2, June, 1945, "Research Studies of the State College of Washington", Page 120) that even high ministerial officials of the German Republic did not consider Hitler a liar at that time, 1930. That was how Hitler's clever propaganda influenced such critical, hostile circles. Should one be surprised that the masses of the SS put their trust in him. Incidentally, there were only a few thousand of them. Yes, matters went even farther. When Dr. Kempner accused the Nazi Party in 1930, the highest state attorney with the supreme court decided in August, 1932, that there existed no reason to prosecute or dissolve it. (Compare Kempner's study, Page 133) What were the results caused by such opinions voiced by the highest authorities of the republic as far as themasses were concerned? They were expressed by ever-increasing election returns for the Nazis.

But the most striking feature is -- and that is of such a decisive importance for the inner attitude of those thousands who joined the SS just after January 30, 1933--that Hitler actually did not break his oath. Although it is quite true that Dr. Kempner's prophecies in regard to the further development were correct in general -- this one recognized only much later -- he was at the very beginning mistaken with his predictions The Nazi Party actually remained a legal one, it seized power not by a coup d'etat, but Hitler was asked to form a cabinet by Hindenburg in accordance with parliamentary rules.

What is it that those ministerial officials might have said who had refused believing the pessimist, Dr. Kempner? Is it not likely that they believed that they had been right? Was it not that their conscience was quieted? After all, that man Hitler was not as bad as people had said. Now, after he had entered the government he would become a moderate -- as every opposition after gaining power. And was it not true, too, that the great mass of Hitler's followers was proud that they had seized power by peaceful means after an election fight of almost American proportions?

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Considering that period of time one question inevitably arises: was the mass of Hitler's followers, or the mass of SS-men at that time able to recognize that that point of the Party Program which probably was the clearest one, anti-Semitism, contained a criminal element?

Anti-Semitism is not a new phenomenon; it is also, if one studies its intellectual bases, nothing typically German. In my opinion it is based on the feeling of inferiority of the average man, on his lack of self-trust caused by the Jews' superiority in certain intellectual fields. Equally it is true that the refutation of anti-Semitism by all civilized nations and individuals is nothing new; it culminated in the Pope's statement, "The one who discriminates between Jews and other human beings does not believe in God and is in conflict with the Divine Commands." But the enigma which we cannot pass by when discussing the question of criminality is that there exists at all a Jewish problem which is not based on religious differences, but on race. Yes, the enigma is that there still exists a raceproblem which leads continuously to conflicts in our modern world which has grown so small. Isn't it puzzling that the Polish Cardinal Hlond, who went through all the horrors of the Nazi regime, only a few weeks ago tried to justify to some extent Polish anti-Semitism by referring to the leading role played by Jews in the Polish government? Isn't it puzzling that even today, after the horrible experiences of the Hitler regime the Arabs act against the Jews in their traditional homeland, Palestine, and particularly against their influx and that acts of violence should result from that opposition? The situation is similar in Europe. Race problems, not only anti-Semitism, still exist in all other corners of the globe.

All of them cry out for a just solution and it can be found,

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only in granting equal rights to all races. Some progressive nations have made anti-Semitism a criminal offense. But was it criminal when the society, the state under the influence of those mad illusions, at that time tried solutions prohibiting the mixture of races and their influencing public life? Again much has to be explained on the basis of events of those days. The poor example given by a few Jewish immigrants from Eastern European countries, as the notorious swindlers Barmat and Kutisker, stood in opposition to that of the Great German Jew and the unforgotten statesman, Walter Rathenau, who long ago had issued to his brethern a call to their moral consciousness. This situation offered the basis for a collective mood, for a mass psychosis against the Jews, supported by the external economic calamities as it reoccurs always in the course of great political and social upheavals, and as it threatens just in the cause of this present trial to create again a new collective injustice against certain categories of people.

THE PRESIDENT: Dr. Pelckmann, I do not want to interrupt you, but you will not lose sight of the fact that you are only going to be allowed half a day for the speech, and I observe that it is said to occupy 100 pages, and I only interrupt you at the present stage to point out to you that the matters which you are dealing with now are matters of a general nature and to which our attention has been drawn throughout the course of this trial, and it may be in your interest to shorten this part of your speech rather than other parts of it. That's the only reason why I interrupted you now.

DR. PELCKMANN: Yes, Your Lordship, I have already considered abbreviating the speech.

The demand for the legal carrying through of this anti-Semitic principle could not have appeared as a crime because it appeared that its application guaranteed by the state would be carried out without hate and personal revenge. To some extent it was merely the transfer of the American legal regulations concerning immigration quotas to the European scene. Hitler's most trusted confidant, Rauschning, reveals in his book, "Hitler Speaks", page 91, that his inner-most intention was hate; the masses could not ascertain that.

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Concealed remained that hate which emerged from the feeling of inferiority of the one who recognized the superiority of the penetrating intellect over dark impulses. The SS-man learned of anti-Semitism only as the other side of race eugenics which was emphasized. By a skillful use of the historic emotions difficult to understand for the non-European and which were connected with the terms "Ordensprinzip", "Maennerbuende", and "Sippengemeinschaft" -- I refer to documents SS Nos. 1, 2, and 3, and the twisted romanticism in modern clothe to be found there -- Hitler endeavored to create in the SS a group of men whic by attitude and self-discipline represented an "elite" for purposes of most intensive breeding of the own people. This tendency, though very remote to modern Europeans,

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or cosmopolitians, yet might hardly be called criminal -- I am referring to occasional questions asked by the High Tribunal -- and it did exclude automatically an anti-Semitic tendency of the nature of the "Stuermer" or even of the brand of the less vulgar SA. It is significant indeed that the indictment has not charged the SS with one single case of brutality towards Jews before 1933. The so-called "Leithefte", the monthly publication of the SS, and the evidence given before the Commission by witness Schwalm concerning the training of the SS clarify the reserved position of the SS toward the Jewish question. Later it was reaffirmed by the non-participation by the SS in the anti-Jewish pogroms of 1938 which I described in other connection. I shall also demonstrate how the atrocities committed during the war against Jews and the mass killings were in conflict with the original tendency of the SS and how they were made possible by direct secret orders of Hitler and Himmler through criminal individuals and groups and how they were kept secret as far as masses of SS members is concerned.

Out of the wealth of points of the Party Program which the SS accepted as a matter of course, I would like to pick out only the elimination of the Versailles Treaty, and the demand for living space because those two could be decisive for the later supposed preparation of an aggressive war. The Prosecution stated with not a single word how at so early a stage the mass of SS members could assume that those demands were criminal, that means that they should be accomplished by an aggressive war.

I have demonstrated how Hitler strengthened the confidence not only of his SS men by his legal assumption of power but how he acquired the trust of such new men who neverhad followed him on a criminal road. May I respectfully request the High Tribunal to read the evidence which State Secretary Grauert made before the Commission to learn how a man with the best intentions entered the Hitler administration and the SS, and how he left it not before 1936 when he as an experienced legal administrator realized that the suspension of the historic principle of the separation of powers was bound to corrupt the state basically.

THE PRESIDENT: Will you spell that name you mentioned?

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DR. BELCKMANN: G-R-A-U-E-R-T, Grauert.

THE PRESIDENT: All right.

DR. BELCKMANN: That thing which he as an expert realized - only in 1936 - remained hidden to the masses. For that reason please read the summary of approximately 136,000 affidavits which show why the membership of the General SS increased from 50,000 on 30 January 1933 to approximately 300,000 within a few months.

Hitler's great gamble for power, and with it thetremendous betrayal of the German people, only begins - as paradox as it may sound - after the so-called seizure of power. After one month of triumph over the Chancellory, and this parliamentary revolution in the course of which, no doubt, excesses and crimes have occurred with which the mass cannot be incriminated under premeditated planning. The pre-requisite is being created for the final elimination of all opponents; the burning of the German Reichstag. The prosecution does not assert that the German people, the members of the organizations, the SS men, knew or even assumed that this arson was decided among the rank of the Nazis and was carried through by the Brown Shirts by using the tool of van der Lubbe. Such an assertion would, of course, be absurd.

In order to understand the mentality of the SS men who, after January 1933, filled the ranks of the SS and formed four-fifths of their strength, one must recallthe Reichstag speech of Hitler of the 17th of March 1933. A large part of the opposition was eliminated after the fire by prohibiting the Communist Party and arresting many of their members which was approved by the enraged population because of their alleged participation in the arson involving high treason.

In answer to the demand of Hitler for the creation of an Enabling Law upholding all parliamentary formalities, the Social Democratic members of the Reichstag asserted that this Law was undermining the security of justice.

In view of the true background pictured it can be considered to be mad devilry when Hitler answered the following in reply: "I really must say that had we not possessed an understanding of justice, then we would not be sitting here and you would not be sitting there ---Gentlemen, it would not have been necessary for us to embark on this election, nor would it have been necessary to call in the Reichstag."

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But who, gentlemen of the Tribunal, out of the mass of the people, out of the old and new members of the General SS, knew at the time how bluntly Hitler was lying. These men were misled by a cloak of justice with which Hitler veiled himself. Not only with this speech, just consider how the Reichs Court, old, experienced, previously Republican judges, which exacting accuracy during many months of trial until the year 1934 considered the question of guilt with reference to the Reichstag Fire. They found the Communists Torglor, Dimitroff and others innocent, but they sentenced the Communist von der Lubbe and determined publicly the complicity of Communist circles who remained unknown. Did not the mass of SS members, as well asthe furthest circles of the German people, have to assume that Hitler had actually saved the people and the State of a violent revolution for which the Communists were blamed at that time? Who, perchance, could possibly learn as I did being a defense counsel here --- that the indictment which had been prepared for months, even years against Thaelmann, had to be withdrawn since then the evidence material was just not sufficient. These few who then, or soon after, learned or guessed the truth and who, subjected to the ever-increasing danger of arrest, pronounced doubts regarding the authenticity of the official and popular thesis in discussions with friends and acquaintances these few knew that, confronted with the appearance of justice, tirelessly pursued by propaganda, they were not given credibility by the masses.

The masses appreciated that in view of this threat of the State the so-called "enemies of the State" were to be made harmless in time. Seen from this point of view even the concentration camps appeared justified. But I shall come back to that later. All these were harsh and, in many cases, evencriminal measures which partly also incriminate SS members but not the entire mass of the SS.

However, we must not leave one thing out of sight: the use of force typical in a revolution by their members did not only occur after Hitler's acquisition of power, the cunning thing in that connection was that these excesses - such as arrests and bodily injuries - which were carried through by members of Nazi formations - to the least part by members of the SS - were carried through with the realization that they were necessary in order to

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safeguard and defend the power which was legally acquired against attacks or threats.

This revolutionary mood, after the acquisition of power, created by the deception of the masses regarding the true events which, indeed, must be considered something unique in history, bears the typical trends of all revolutionary excesses: Under the cover of factual or alleged idealistic motives - such as love of the Fatherland, love of humanity - crimes are being committed. Just consider, gentlemen of the Tribunal - since we are not sufficiently removed from the many revolutions of the modern age - just consider the French revolution: what amount ofcrimes were committed under the slogan of, "Equality, Liberty and Brotherhood!" Considering the experience of modern psychology it seems to me to be quite out of the question that mass movement can be unleashed or incited with inferior moral aims. The mass cannot consciously be led to crime. Even Gustave le Bon inclines to this opinion. In the shadow of high ideals of the masses crimes frequently occur, but then, they are only caused or executed by the few who deceive the masses about the true reasons and events. This thought, in my opinion, is the central point with regard to the question of concentration camps and cruelties committed therein and the responsibility in that regard of the mass of the SS, a question which is to be dealt with later.

The concept of faith, too, belongs to such ideals which incite the masses. One must be acquainted with the German mentality in order to be able to gauge what immense possibilities of shameless misuse of hundreds of thousandswere offered to the psychopathological misleader of a people -- Adolf Hitler, with this concept. We know how much the word "Faith" means to a German on the basis of his education, influenced by romantic and retrospective contemplation of history. Tacitus praised the ancestors of the Germans in that respect. Hitler is utilizing this weakness of the Germans and thereby chaining hundreds of thousands, even millions to himself and his fate. We know what is possible and understandable in private life is a basic wrong in the

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State. By that I mean the absolute binding to a human being. The philosopher Karl Jaspers has the following to say to this question in his work, "The Question of Guilt."

"The faith of followers is an unpolitical relation within narrow circles and among primitive conditions. In a free State there prevails control and change of all people."

The German Socialist Bebel expressed it once in the following manner:

"Mistrust is a Virtue of Democracy."

These views are taken as a matter of course for the people of the world. For a peoples, however, who wanted to create a modern state according to retrospective historical dreams, they are a new revelation. Quite justifiably Jaspers is seeing a double guilt.

"First, the fact of generally, politically submitting oneself to a leader without reservation, and secondly, the evaluation to whom one subjects oneself. Even the atmosphere of such subjections means a collective guilt."

Jaspers means by that expressly a political guilt, a moral and political guilt, but not a criminal guilt.

In the individual case, however, a criminal guilt can arise out of this fate for the individual perpetrator. That becomes clear when listening to the secret speech of Himmler at Posen before SS Obergruppenfuehrers of the home country and of the rear army area. That was only late in the war -- October, 1943, (PS 1919, SS Document 98). After various statements concerning obedience and the possibility to refuse execution of orders, he says quite clearly: "The man, however, who becomes unfaithful and be it only in his thoughts, will be dismissed from the SS and he, Himmler, will see to it that he disappears from life."

This, Gentlemen of the Tribunal, is an important fact with reference to the question of guilt in the individual case, and with reference to the question, to what extent coercion and order during the war eliminates the guilt and thereby the criminality of certain individual persons or subordinated groups. This is additional to the question of refusal of military service and its consequences according to military law.

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Of what supernatural, yes, even devlish power, this tie of faith was, Himmler, with his own personality gives the best example in his relation to Hitler during the last days of the war.

The Swede Count Bernadotte describes, from his own experience, in his book, "The Curtain Falls", how Himmler could not make the decision to save the German people from it's destruction by the ceasing of hostilities, in spite of his very clear realization of the consequences. Bernadotte admits that it was due to the fact that even in this hopeless situation he would not violate the faith to Hitler. We also know how at all times and will all peoples it was this faith that made soldiers keep going on until the last drop of blood during heaviest battles, just as the Waffen SS who thereby won the respect of their opponents in this war. And from these two examples we see how this hypnotic word, "faith", determines criminal madness as well as the highest virtue of the soldier at the same time.

So much for the question of how far the SS man had knowledge of the points of the program of the Party -- that is, if he at all knew them sufficiently, and that is indeed doubtful according to the affidavits of 136,000 SS men, and how he viewed the ideal of this organization. But did not the Nazi leaders intend war from the very beginning? Mr. Justice Jackson asserts this, and I answer: According to the knowledge that we have today, I admit it, yes. But how could the SS man know about it?

The Prosecution does not say why the chain of an Army comprised of professional soldiers to a peoples Army should mean the planning of an aggressive war. In Switzerland, an example of a country with a people's army, the militia did not wage wars for a long time. Was the advocation of physical training and sport activities of youth to be a camouflaged plan for military education? Mr. Jackson failed to give us the proof for that assertion. The training of the General SS was not military. Field manuevers as practiced with the SA were completely lacking, and -- a typical example -- the riding units of the SS who were numerically smaller than those of the SA, did not even give their members the right of a riding certificate, as was the case with the SA. (Testimony of Wokowsky-Biedau before the Commission).

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We know today that Hitler wanted war, it particularly arises from the intimate conversations with Rauschnigg and when considering the total events, but Gentlemen of the Tribunal, note: It is an ex post realization.

It would have been a fruitless undertaking, especially in view of the position in which the German people found themselves after the first World War to present a new war as less disagreeable or bad, or even as a "noble and necessary undertaking," just to use Justice Jackson's own expression. Hitler, whom you can accuse of everything, but certainly not of not knowing the facts of mass psychology, has again and again before and after 1933 pointed out that he wanted peace, peace and nothing but peace. He pointed out that he experienced the horrors of war on his own body, that war always proved results, damaging the most valuable assets belonging to the people of every nation. And only because of that assurance, he won ever-increasing numbers of the German people for himself and his ideas. With propaganda for war, however carefully conducted, he would have never achieved it.

The rearmament was demonstrated to the German people as merely being a confirmation of the world of peace and as being a defensive measure against the non-disarmament of other nations and against possible attempts to interfere with the peaceful re-building of Germany. The building of the West Wall confirms it, and so do many utterances of foreign military experts such as for instance the English Brigadier General Fuller. The high-ranking main defendants and many witnesses including the certainly reliable witness, Gisevius, have confirmed that not even in the leading

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circles a planning of aggressive war was discussed. This applies to the SS in a stronger sense. The entire training with the organizations was always headed with the aim that the execution of the party program be carried through in a legal and peaceful manner. Not only was there no psychological preparation for war carried through in all the SS organizations, but to the contrary, it was the Reichs's will for peace that was continually confirmed.

In this connection, I would like to ask the High Tribunal to read the document SS 70, 71, 73, 75, 76, 78, 79, 80, 81, 82 from the years 1933 to 1935, particularly an article from the "Black Corps" of 1937, entitled "The SS does not love War", written in 1933, the public declaration of the Austrian Bishops of March 31, 1938, stating that they were convinced that Nazism did not mean war, and the secret decree of the Fuehrer of August 17, 1938, re-affirming that the General SS as a political organization of the NSDAP was not in need of military formations and training and that it was unarmed.

The lack of psychological preparations for war among the German people and equally among the SS never became as clear both to domestic and foreign observers as by the reaction of the mass of the people to the Munich Pact in 1938. The masses including the SS who formed the cordons was not aimed at that Adolf Hitler who had enforced the surrender of the Sudetenland, but rather that Hitler and even more those foreign statesmen who had saved the peace.

For the German people and the soldiers did want war, and this must be stated at this historic spot for the sake of historic truth -- when war came in 1939 they accepted this fate not without cheering jubilance as in 1914, but with solemn silence, in their majority victims of the erroneous belief that their leadership had not desired the war.

However, it would mean to give up all dignity and to lose face if I should try to deny that the young Germans, particularly in the SS, saw his ideal in those manly virtues, in the same virtues of standing up and the resolution to dare anybody, virtues cherished by other people too. However, the SS men possibly over-emphasized these virtues in amanner which not always was good or wise. But none of the old soldiers, students and farmers, who had joined the SS imagine that war would in anyway resemble that what Hitler aimed at.

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If Hitler ever had dared to speak to those men about attacks on other peoples with whom he had just recently concluded solemn pacts of friendship, or of Einsatzkommandos in foreign lands he would never had found any followers apart from a few desperate souls. I must assume that that war which the tall, blond and perhaps intellectually not too alert, typical SS man did not fear, the war as it had been conducted in his imagination since centuries by his ancestors, in the long run, it ended always with the appeal to destiny, the great gamble of the gods. Certainly, it is true that we have to free the Germans and particularly the young Germans of this atavistic longing -- and I dare say that in this regard I am now more optimistic for my fellow countrymen than for many another people -- but war as such of which it appears that it cannot yet be uprooted (The Kellogg Pact and modern international law do not condemn was as a means of defense and self-preservation) that war is something essentially different than that high treason, that betrayal of world peace, that attack and robbery coupled with exterminating ideas, which was invented by Hitler.

In addition to the general aims and tendencies of the General SS with which the Prpsecution charges it from the very beginning and due to which it declares it criminal, there is above all one event which is said to throw light like a flash on the criminal character; the killings which have been performed on June 30, 1934.

There are three pages concerning evidence at this point I shall leave out to save time, your Lordship.

The events of the 30th of June, according to the explanation I shall give, and I do not attach too much importance to the fact that the Prosecution wants to assert that even in the beginning a criminal development had to be considered or contemplated, and what means contributed to the forming of his opinion, and thereby we must honestly start from the facts, and that unlike his opponent the SS man did not with a particularly critical eye examine everything said about his Fuehrer and his State, but he wanted to believe in something, and this belief, as I shall prove was not found by him in the surrounding world, and the world around him unfortunately did not take the same view of it.

Your Lordship, I have just come to the end of a Chapter and would it be all right to adjourn now?

(A recess was taken until 1400 hours)

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AFTERNOON SESSION

(The hearing reconvened at 1400 hours, 26 August 1946.)

DR. PELCKMANN: I have said, your Honor, that the surrounding world, unfortunately, did nothing to shake it.

And what I shallnow discuss does not serve to declare others guilty, and to distract from ones own guilt if it exists. No -- these statements are supposed to clarify how we all, the whole world did something -- in part, likewise deceived about the true danger; in part in the hope that we would thus best master this danger -- which, in its effects on the whole German people, Hitler's followers, and his SS men had to be interpreted as confirmation of the correctness, the legality of his intentions and his deeds.

I can understand that this evidence was declared irrelevant for the defense of the individual defendants, for they are being charged precisely withhaving deceived the world consciously. Then, one cannot use the conduct of the world as an index for its credulity. In the case of the organizations this problem is different.

The mass of their members, even the mass of their leaders, the Prosecution will not seriously charge with having known of the criminal aims and intentions of Hitler and they will certainly not be able to prove such knowledge. I have just shown how the events up to about 1934/35 had to appear to the SS man. Thus, the objection of the Prosecution that they could not have been strengthened in error, which is worthy of consideration for the principal defendants, does not apply to the organization which I am defending.

What was the situation at that time? (I quote essentially from Jasper's "The Question of Guilt" (Die Schuldfrage), pages 82-83).

"In the early summer of 1933 the Vatican concluded a Concordat with Hitler. Papen conducted the negotiations. It was the first great confirmation of the Hitler regime; a mighty gain in prestige for Hitler.

All states recognized the Hitler regime. One heard voices of admiration.

In 1935 England concluded the Fleet Pact with Hitler through Ribbentrop.

In 1936 the Olympic games were held in Berlin. The whole world flocked there.

In 1936 the Rhineland was occupied by Hitler. France tolerated it.

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In the spring of 1938 Hitler moved into Austria amidst the acclamation -- still undeniable today -- of the overwhelming part of the population.

In 1938 an open letter from Churchill to Hitler was published in the Times, in which there occurred sentences like this one:

"Could England be overcome by a national misfortune comparable to the misfortune of Germany in 1918? I should ask God to send us a man of your strength of will and of spirit."

How is it possible that in all these years, foreign diplomats and leading men -- accompanied respectfully and in confidential conversations by SS men -- at party rallies, in the Reich Chancellery, and in the Ministry, shook the hands of murderers and arsonists? What effect did that have to have on the consciousness of the SS man, who considered these hands pure and clean?

The total situation in the years 1933 to 1939 is characterized by Roepke in his book, "The German Question" (Die Deutsche Frage"), which was published in Switzerland.

"The present world catastrophe is the gigantic price which the world must pay for having been deaf to all alarm signals, which from 1930 to 1939 in increasingly shrill tones, proclaimed the hell which the satanic forces of National Socialism were to unbash, at first against Germany itself, and then against the rest of the world. The horrors of this war correspond exactly to the others which the world let pass in Germany while it even maintained normal relations with the National Socialist and organized International celebrations and congresses with the National Socialist and organized international celebrations and congresses with them." I willnot read the quotation and ask the Tribunal to read it.

At that time the world still considered what happened in another state as an affair which did not concern them. Only as a result of the experience with the Hitler regime and the second world conflagration, is the solidarity of the great states and, we hope one day that of the United Nations, seeing to it that dictatorships and undemocratic methods in all countries do not lay the cornerstone to new world conflicts. I cite the remonstrances of the United States because of the internal government conditions in Argentina a few months ago.

Now, before I turn to the particularly criminal activities of the SS which the Prosecution has listed, I should like to interrupt the consideration and evaluation of material with a few statements on the law of the Charter and on the rules of procedure. I did not want to bore the Tribunal with this at the beginning, but first I wanted to create a factual atmosphere in which the legal argument would gain strength. My arguments will be as brief as possible, for much has already been said in this connection by my colleagues, and I fear that more will be said, and the Tribunal knows the memorandum of my colleague Klefisch. I hope that my statements may afterward clarify what I have already discussed, and I hope that they may give insight into the underbrush of the voluminous factual material which I can offer in the remaining period of three hours which was granted me for my speech.

The legal nature of the indictment against the organizations and the possible finding of an organization as criminal must be cleared up. The general statements of the defense regarding the possibility of the organizstions committing offenses are known to the Tribunal. I consider them fitting and correct. And yet one must ask the question : Who is really indicted with the purpose of a statement according to Article 9 of the Charter ? Is it really the formations as former legal entity or, is it not rather, in reality, the millions of individual members who, merely represented by one of the principal defendants and represented by the dead formations, are sitting in the dock ? It is the individual members who are the whole complex of questions. The Trial will not decide on the fate of the former organizations which are not alive and can never become dangerous but only on the fate of the many members. A glance at Law No. 10 and the disastrous consequences of the declarations of criminality confirms this. Declaration of criminality creates a previous decision -- constituting guilt and unassailable-- for possible charges under Law No. 10.

Is it true that the principle of opportunity is in effect for subsequent proceedings, that is, it is up to the Prosecution whether it considers it expedient to indict the individual member. But this does not change the basic idea.

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The declaration of criminality thus bears the character of a prejudicing declaration of guilt for each individual member of the organization. If the individual is not indicted later, he receives no punishment, it is ture; but he is nevertheless a criminal according to legal decision. The character of criminality does not affect the organization as such, but in reality -- since the organization as such no longer exists -- exclusively its former members. Before you, Your Honors, the main trial against each individual one of these members is proceeding. The issue is the establishment of his punishable action, "membership". The most important declaration of guilt is made against each individual. The concept of guilt, however, in all civilized states of the world, is always, within the meaning of the law, connected with the individual deed of a person. There has never been guilt of organizations. No one could object to declaring the aims and purposes of an organization criminal if individuals were not affected thereby. But as soon as the declaration of criminality of the organizations is to be the indirect condemnation of individuals one must conscientiously examine and establish the individual guilt of each individual.

One comes to this conclusion for another reason as well : What does the concept of organization include ? That an organization is a union of people is clear. That this union, at least in general outlines, pursues unified aims and purposes and has a corresponding constitution should also be clear. Whether it includes the characteristic of voluntariness is, on the other hand, extremely doubtful. No one will deny that the German Wehrmacht was an organization although there can be no question of voluntariness, not even in the majority of the cases. One may think further of occupational groups, schools, or even compulsory guilds, in which there is no voluntariness of joining, but which are certainly organizations. The Klefisch Memorandum as well as the basic decision of the Tribunal of the 13th of March, 1946 (Paragraph 6, No. 2) introduced the characteristic of voluntariness into the terminology. In my opinion, quite correctly. But why ? Fundamentally only because otherwise the aftermath of declaring the organizations criminal would appear unjust in view of the consequences for the indivi-

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dual members. What follows from this ? Very much. One sees here quite clearly that in reality it concerns not the organization but the members. The decision of 13 March 1946 considers relevant only the question of whether membership was in general voluntary; it therefore takes into consideration that involuntary members will be affected. In view of the consequences of Law No. 10, this is not reconcilable with the idea of justice.

Constitution, Aims, or Purposes, and Activities of the Organization -- whether on a voluntary basis or not -- are criminal if they fulfill the conditions of Article 6; that is, if they were aimed at crimes against peace, war crimes, or crimes against humanity. In connection with No. 6 of the Charter are to be carefully examined here. One should ask, for example, were the constitution, aims, purposes, or activity of the SS aimed at the planning, preparation, inauguration or execution of a war of aggression at the violation of the rules of warfare, or at murder, extermination, enslavement, and so forth ?

These latter crimes of Paragraph c of Article 6 of the Charter, however, are punishable only if they were committed in execution or in connection with another crime punishable under the Charter; that is, in connection with crimes against peace or war crimes. This is how the author of the Charter, Justice Jackson, explained it in his statement, which is added to the text of the Charter in the "Department of State Bulletin" of 12 August 1945 on Page 228.

I ask you read the English text.

"Crimes against humanity when associated with attacks on the peace of the international order."

I have already explicitly shown that in the examination of the charges the Prosecution in connection with Article 6 of the Charter the judgment must adapt itself to the time of the program point in question or of the ostensibly criminal act.

After establishing that the crimes were withtout doubt committed, the question of whether the organization as such is to be designated as criminal will depend on how many or -- in proportion to the millions of members --

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how few SS members took part in these crimes. Did an organization really act or did only relatively few members act, who perhaps - in order to establish the paradox- frequently had not even joined the SS voluntarily ?

That it must not be overlooked at what period the individual crimes took place the High Tribunal has already affirmed in its decision of 14 January 1946. If at all, then it is quite possible that the organization or a part of it was criminal only at certain periods of time. Forms that were once cast could perhaps appear criminal only through later misuse, although they were originally not destined for it. An axe which if sorged never knows when it leaves the anvil whether it will perform useful service for humanity or will one day be misused, as a murder instrument, if only -- to follow the metaphor through -- with its detached wooden handle.

That such limitations in regard to time and personnel are necessary is shown by the following examples: The indictment says on Page 5 that between 1933 and 1935 unsuitable members were expelled. I may add that these were about 50,000 or one-sixth of the membership, who -- this is shown by the most varied testimony and affidavits -- on the basis of their previous political attitude had only sought camouflage, also previously convicted persons and other unreliable elements.

Even these persons would not be accepted from the indictment and the consequences of the declaration. Such a grotesque result cannot possibly be be desired.

Finally according to No. 6 a (3) of the decision of 13 March 1946 the evidence will have to be examined to see how far the knowledge of the individual members reached. This question will be decisive for the judgment on the masses of the SS.

I said before that even if the SS Organization, the no longer existing organization, is formally indicted, the indictment is nevertheless, in effect, directed against each individual member. If now the criminal character of the organization is to be proved through criminal acts of the members, then the member who is supposed to have committed this specific crime, must have an opportunity to answer to you, Your Honors.

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If he cannot do this, then the Court cannot form an objective picture of whether the accusations are true. Then how will the proceedings be carried out in an indictment according to the Anglo-Saxon group penal law ? The leaders and the members were heard in detail on the specific accusations made against them -- the Court does not judge on the basis unfavorable testimony of witnesses without the leaders' and members' of the organization who are personally affected by this testimony having an opportunity to comment on it.

How little the court can base its judgment only on the testimony of witnesses without in concrete cases also hearing the accused person or persons is shown by the astonishing experiment which I undertook with the witness Israel Eizenberg on 7 August 1946 (Please look at the English Transcript Page 15283/84). I showed him two pictures from a Prosecution document PS 867 in Polish, Exhibit SS Nos. 2 and 3, from which I cut off the captions under the pictures. The witness called the two men pictured SS men and named their SS ranks. He deduced these ranks exclusively on the basis of the epaulettes and an insigne on his sleeve.

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The witness Morgen, whom I examined on 6 August 1946, immediately recognized as an expert that the men pictured were not wearing SS uniforms, and were not SS men. He pointed out that these photographs showed the epaulettes of the police, and on the sleeve the insignia of the police. In the photograph Exhibit SS No. 3, which is in the hands of the Tribunal, the police insignia can also be clearly seen on the cap: the eagle completely enclosed in an oval wreath of oak leaves. Nowhere your Honors, is the SS insignia to be seen. All other photos in this book also show only police uniforms and police insignia. But all of this did not strike the witness; he considers these men "SS men". That was only a minor example of the powers of observation of the witnesses with regard to uniforms.

Please consider further how slight the difference is between the uniform of the SD and that of the SS -- only a small SD rectangle on the sleeve -- and that non-members of the SS wore this uniform (compare the testimony of Dr. Best and Reinecke before the Commission), that precisely in the rear army area it was the police who were employed, while the SS was at the front, that the mass suggestion of the guilt of the SS distorts the memory of the witnesses; then, Your Honors, you will be able to realize the true value of the testimony of non-German witnesses who arbitrarily give "the SS" as the perpetrators of any crimes in the occupied countries.

The incompleteness of a collective indictment, which is raised here for the first time in the long history of law, is based particularly on the difficulty of taking testimony for the accused organization in a fair manner. This difficulty arises of necessity from the peculiar nature of the proceedings, particularly from the fact that it is technically hardly possible, or possible only through proceedings lasting for years, to clear up every concrete charge in a satisfactory manner by hearing the specifically affected members of the organization, and to establish whether each charge is justified or unjustified.

As long as in such a trial it is impossible for the defense immediately to produce each individual member of the organization who is impeached by prosecution witnesses or documents, and to have him make a concrete statement

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as well as to hear further witnesses on this case, this trial remains incomplete and unsuited for a just finding.

It follows of necessity that to a large extent the cases of the prosecution and the defense passed each other without being able to give the Court a picture of the true state of affairs in large fields of the charges. Only thus could the grotesque picture arise that we experienced repeatedly during the defense case; a defense witness described his activity and the units and SS men under his command. It covers sectors as large as possible in regard to subject matter and territorial extent, since the Court permitted only a minimum number of witness in proportion to the total membership, and any individual testimony of a little man was inadmissable according to the decision of 13 March 1946. The Prosecution would not have had to attempt to break down the testimony of the witness in cross-examination. The surest and simplest method for this would have been to throw doubt on the credibility of the witness by showing, for example, that he himself had committed a crime or that such things had been done by people under his command.

Although the Prosecution had many weeks to examine its records and those of all the allies, which records had existed for months, yes, for years, and although these 29 witnesses before the Commission and before the Tribunal had held middle, high, and highest positions, the Prosecution could not prove any such thing against them. Is not this fact already the best refutation of the contention of the criminal character of the SS? Is it not symptomatic if the Prosecution did not succeed in accusing or convicting one of the highest generals of the fighting Waffen SS, a very high fuehrer of the General SS, at the same time Higher SS and Police Leader and Police President -- an extremely rare

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case -- of the third largest German city, a staff officer of the administration of the Waffen SS who was repeatedly in service at the front, and two high SS judges, of committing or tolerating crimes? Later on I shall discuss the case of the witnessSievers, the only case which was different. Thus the Prosecution had only one recourse: it consciously brought forward documents or affidavits which were to prove that crimes had been committed, but with which, even in the opinion of the Prosecution, these SS witnesses themselves had had nothing to do. Nevertheless, the Prosecution asked the witnesses whether they knew of the events described therein. Were they thus seeking to discover the truth for which this taking of evidence was intended, or was further evidence merely to be introduced at a time when the case of the Prosecution had already been closed? These documents are for the most part government reports on investigations which have not yet led to any trial or judgment -- particularly in the partisan territory in Jugoslavia, which is very difficult to judge. Their evidential value must be very slight.

Can the new documents and affidavits introduced thus in enormous numbers make it possible for the Court to answer objectively the question of whether the deeds actually took place, and thus whether the SS is criminal? Would not the Court have to hear the accused, that is, the SS men who were mentioned by name in the documents or members or officers of the accused SS units? After the experience with the ability of the witness Eizenberg to distinguish uniforms, I ask, is it convincing that these people say, "They were SS men"? Or were they police or SD and Gestapo members? In part such errors arise obviously from the documents. But I cannot and do not wish to deny that according to a few documents terrible crimes have been established, and that they are numerous. Should not the Defense have an ample opportunity to comment on these documents and affidavits with as much preparation as for the evidence which the Prosecution presented in November, December, and January? Should it not be given a few months' time? I do not fail to realize that my demand would mean a prolongation of the trial for months, insofar as the case against the organizations is concerned.

THE PRESIDENT: Dr, Pelckmann, the Tribunal has already ruled that the trial has got to conclude now, and therefore any argument that you would have three more months is entirely irrelevant and can't be listened to. The Charter lays it down. It is for the Tribunal to say how the individual is to be

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represented, and we have laid it down to the best of our ability.

DR. PELCKMANN: But if for these reasons the judgment cannot be delayed that long, then it must be passed now; but since the new evidence of the Prosecution cannot be taken into consideration, it can consist only in rejecting the applications of the Prosecution.

I must add something. I asked myself whether I should deal with the Erhardt affidavit, D-973, from the Neuengamme Camp. It is necessary because it was typical of the evidence of the Prosecution in this last stage of the trial. It is necessary at the last minute, and when it is no longer possible for the defense to carry on investigations on the spot. Compare thd decision of the first of August 1946, which does not permit visiting camps, in contrast to the Prosecution, whose administrative machine goes into all camps.

THE PRESIDENT: Dr. Pelckmann, if you are proposing to deal with the rules which the Tribunal has made with reference to the hearing of individuals, the Tribunal willnot hear that. The Tribunal has done the best it can to enable individuals to be heard, and the Tribunal does not propose to listen to you criticizing what the Tribunal has done.

DR. PELCKMANN: I believe there is a misunderstanding, Your Lordship. I am not criticizing. I am dealing with thisErhardt affidavit, the evaluation of this testimony.

THE PRESIDENT: Very well. Go on.

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DR. PELCKMANN: This affidavit cannot shake the value of the affidavits of the SS members. It refers only to the interrogatory, which does not come from me, and the answers -- there are altogether only 40,00 -- which I do not utilize.

I submitted 135,000 detailed affidavits to the Tribunal, and I summarized them. The methods described by Erhardt could not be used in them. As evidence of this, I should like to ask you not only to read the summary but also a few of the very conscientious and descriptive affidavits themselves.

The Erhardt Affidavit itself is full of contradictions, improbabilities, and exaggerations. Erhardt was an SS man and is now the servant of the British authorities. Of course, he does not want to lose his position. Therefore, he has every reason to make himself popular.

Can a single affidavit on the ostensible circumstances in only one camp, the actual and psychological reasons for which are so doubtful, shake the value of 135,000 detailed statements? No, Your Honors. This attempt of the Prosecution to shake the value of the whole legal hearing guaranteed bythe Charter can remain only an attempt. It lies in the nature of the Defense in this trial that it unfortunately does not have the possibility of ascertaining such mistakes in the obtaining of mass material by the Prosecution and of criticizing it.

I am of the opinion that the result of the Prosecution's evidence insofar as it may be considered, in view of what has just been said, forces the Defense to the conclusion that crimes in considerable extent were committed by members of the SS, but not that the whole SS organization is criminal.

Is it not striking -- and I should like to settle one point of the indictment immediately in this discussion of procedural and evidential questions that there are only two judgments, concerning the inhumane fighting methods of the SS, for example by shooting prisoners, against SS General Kurt Meyer (Normandy front) and SS General Sepp Dietrich, and 73 officers and men of his army. That, Gentlemen of the Tribunal , is the result of the most energetic efforts on the part of all the Allies for more than a year, which ar understandable in the interests of the contentions of the Prosecution.

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Must one not conclude therefrom that in spite of this long period of time the Allied Prosecution was not able to establish more crimes through judgment? The death sentence against Meyer, with which I am acquainted, was commuted. The trial of Sepp Dietrich and his men, the transcript of which I was not able to obtain, ended with 43 death sentences, but it is striking that the highest leaders did not receive this punishment. This must bring us to the conclusion that there were no such criminal orders from them, and consequently no criminal system, and the Defense brings forward some noteworthy objections against the methods of investigation and evidence.

I should ask you to note the following, High Tribunal: These happenings occurred in the last half year during the most violent part of the war, and concerned only very few members of the Waffen-SS.

At the same time please remember the extensive counter evidence given by witnesses and affidavits, which the defense procured also for this particular point of the indictment (The training for and the carrying out of fair warfare, and excesses committed by the enemy, which were only meant to prove that from such occasional excesses in battle, one cannot conclude upon a criminal system).

In this connection allow me to develop another principle governing the evidence which to my mind must be the basis of the estimating of the evidence in these proceedings: Where any doubts may arise, whether the individual charges are proven by the evidence, the weakness of which I have just made apparent, particularly where doubts arise, whether proved individual crimes may be said to be typical and that, therefore, the entire organization, that is, all its members, can be considered criminal; where, therefore, one counter proof, or circumstantial evidence, is given ten or one-hundred proofs of circumstantial evidence of the Prosecution -- in that case I believe that the Tribunal cannot draw any conclusions which are sufficient for a condemnation in the sense of the indictment.

This is a fair logical conclusion arising from the nature of these proceedings. From the tremendous evidence at its disposal, the Prosecution has chosen and charged some incriminating facts, and then made the assertion that these were typical cases, that it had been everywhere like that, that

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that these actions were typical for the SS, etc. As already stated, it is the sole responsibility of the defense to furnish exonerating evidence. And this is where the difficulties for the defense of the organizations, particularly of the SS, begin. The organizations have been dissolved; they exist no longer. When we established the evidence most of the members of the organizations, and all their leaders were in custody and many of them still are.

The occupational authorities have secured the entire written evidence, all personal acts, correspondence, decrees and orders. It is true that we have been able to speak to most of the prisoners, but after so many years, and particularly, in detailed questions, the information was bound to be incomplete, and was given only in April and May, due to the progress of the trial. We could not always reach competent persons. In connection with the question of the legal hearing, I would ask you to consider that we have no evidence at all from SS men from Austria and the Soviet-Russian zone of Germany. Out of reasons of security we could not be granted to conduct a research in the Allied document centers in which the confiscated documents are classified according to the subject they pertain to, and thus we were not able to obtain a reliable view based upon documents. We could not counter this deficiency by an approximate indication of the documents based upon certain assumptions, because a specified indication was demanded. As things stand the counter proof is considered successful if the Prosecution succeeds in establishing but a shadow of a proof for their assertions.

And now I shallskip two pages, Your Honors, 32 and 33, and I shall deal with the charge of the participation of the SS in the pogrom of the 19th of November 1938. The next four pages deal with that, which I must also skip for lack of time, Pages 33 to 36. I ask you to read them.

THE PRESIDENT: Dr. Pelckmann, I see that you have gotten only to Pages 32 and 33?

DR. PELCKMANN: I want to start on Page 36 now. Is Your Lordship's copy longer? I am farther on.

THE PRESIDENT: I do not have a copy at all; but I do not understand how you are proposing to finish your speech, if your speech is, as I am told, about 100 pages long.

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I tried to point out to you at an earlier stage that the sort of general topics which are very familiar to us were topics which you might just as well pass over, and you said "Very well; I am going to shorten my speech. I have taken steps to shorten it".

Now we find that when you have been speaking for nearly two hours, you have not gotten any farther than Page 33. All I want you to understand is that you will not be allowed more than a half day.

Now, will you go on, please?

DR. PELCKMANN: In the pages which I am skipping, I have dealt with the events of November, 1938. Then I add that in the arrests, which were purely a political matter and were up to the Gestapo, some officials may have had black uniforms on. This would be a typical erroneous generalization which can be traced back to the fascination of the black uniform and of the SS insignia, and whose falsifying influence upon truth and recollection must not be underestimated for the entire proceedings against the SS.

This insigne in its insolent aggressiveness instilled by visual and auditory means, was not only dangerous in the past through its publicity value, because in the German it awoke romantic historical feelings by the doubling of a Germanic rune, but even today after the destruction of all the myths surrounding it, it has the peculiar power of preventing any clear conception as to its nature. This word "SS" is so easily pronounced, without being accompanied of any clear conception as to its real meaning.

There exists the danger that an historical myth may be born which like any other such mythsi is based upon the ignorance of the facts, or, even worse, upon a semi-knowledge of these facts. We, who combat the Hitler myth wherever we can, -- we have done so in the evidence before the Tribunal -- do not wish that a myth should be formed around a group of people under the slogam "SS", around the guilty and innocent alike. We do not want to help to create so-called "martyrs" in the interests of a neo-fascist propaganda.

That is why we must ask a definite question and give the answer: "What is the complete meaning of SS?"

The decisive error of the indictment is that all, or at least all essential spheres of activity of Himmler's, are considered as activities of

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the SS. Without heed to the origin or tasks of the many agencies and units under Himmler's command, without heed whether there ever existed any organized bunds, the indictment assembles the general SS, Waffen SS, the SD, the Police, the Concentration Camp system, the affairs of the Reich Commissar for the consolidation of German Nationalims, the activity of the Chief of the Prisoners of War system and others, in one great imaginary unit, the SS. The indictment must proceed from such a unity in order to create a basis for the evidence that within the frame of an alleged conspiracy, all sectors of the public life in the State, in the Party, and in the Wehrmacht, were permeated with this SS, which had spread its tentacles over Germany and Europe.

That Himmler's activity was identical with the activity of the SS is only true for the period until 1933 or 1934. Only until then did an organized unity in the SS exist and the prosecution has taken over this idea of the unity of everything which is called SS from this time, thus falsely interpreting the true development of the system. That was the SS as a part of the SA and therefore a section of the NSDAP.

The seizure of power opened an era in which a great part of all supreme and superior state positions were filled with Party leaders. From this time on, Himmler goes his own way at the side of the SS. First -- in comparison to other high Party members -- extremely cautious,y and then ever more dominantly.

It was mainly Heydrich who directed Himmler's inquest for State affai to the field of policy power. Himmler, like many of the SA leaders, had become Police President in Munich in 1933. Soon he was made Chief of the Political Police in Bavaria, and then in the other counties of Germany, with the exception of Prussia. Here, Goering was still Chief of the Gestapo. But soon Himmler became his Deputy and Heydrich the leader of the Secret State Police Office in Berlin. Himmler's ambition for the widening of his power in the State, which the SS could not offer him, now became ever more obvious. His goal was the Ministry of the Interior. Already in 1936 he gathered the entire police power of the Reich, which until then had been the affair of each County, in his hands, in his capacity as Chief of the German Police. Thus he had become the highest superior not only of the Secret State Police and of the Criminal Police, which one jointly names the Security Police, but also of the entire ordinary Police in Germany.

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Only now did he hold a position of power which was of the greatest importance and it was given to him by Hitler and not by his SS, and not through the SS or for the SS. I ask the Tribunal to consider that these Police Officers have existed independently besides the SS, before Himmler became their Chief.

In 1939, he was made Reich Commissar for the consolidation of German Nationalism and was thus assigned a new task, the transfer back of populations, etc.

In 1943, he eventually was nominated Reich Minister of the Interior.

Through his personal allegiance to Hitler and through his acceptance of every, but every, new task, he gained the personal confidence of Hitler and thus extended his personal position of power within the Reich. It was peculiar to this Reich that Hitler should have united an almost inestimable number of officers and tasks in one single person who had his confidence. As an example, I point out Goering's person. In the measure that Goering continued to lose Hitler's confidence, Himmler's power rose meteorically. But this position of power he had gained owing to his personality and without his SS, and quite independently from the fact that he was their Reichsfuehrer. The witnesses, Grauert, Reinecke and Pohl, have amply testified to this effect.

The SS, formerly so closely connected with Himmler, had indeed, in the course of time, taken an individual and quite independent development, owing to the great number of the entirely different sections which began to take shape. Unfortunately the briefness of the available time does not permit me to describe here this development in detail, although it is of the greatest importance to the entire defense. But I have added the necessary explanations, always in regard to the furnished proofs, as annexed to my plea, and I would ask the Tribunal to take note of these arguments in the verdict.

To prove the unity they have asserted, the Prosecution says that the General SS was the basis upon which all the other organizations had been established. The fact alone that almost a million men have at one time been in the Waffen SS whereas the General SS had only counted 250,000 members, refutes this statement. In the aforementioned annex, I have shown how the

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individual organizations have been built up, added to and developed, according to their own rules. The General SS is not the source of life for the other organizations, but an ancient vestige which at first succeeded to keep alive, but which during the war was already dissappearing, because it had to disappear for lack of any special task. (Witnesses Eberstein, Hinderfeld, Juettner, Pohl).

But the indictment did not mention the most important aspect. To my mind, this is an aspect which is particularly suited to bring life into the obscurity of the imaginary unity of the SS; where lay the executive power in the state. For an alleged conspiracy, only such an instrument may have been suitable, which controlled some means of the State authority, which had executive power in the State. Neither the General SS nor the Waffen SS were such organizations. At no time of their existence, did a leader or a simple member of the General SS, have more extensive rights in the legal public and especially police field, than any other German citizen. He could and did never carry out arrests or house searchings without incurring punishment. (Witnesses Reinecke, Eberstein).

The fact that revolutionary excesses were committed, immediately after the seizure of power, changes nothing. They were at once successfully combated as testified by the witness Grauert. No member of the Waffen SS had ever had more extensive rights than any member of the Wehrmacht. (See Witness Hauser). Indeed the executive power in the State was alone in the hands of the police, the state police, the criminal police, combined as security police, and the ordinary police. A policy of power in the sense of an alleged conspiracy could logically have reposed only upon them.

The testimony of the witness Grothmann, who belonged to the closest circle around Himmler, is particularly revealing for the question which activities of the SS are to be considered connected with the executive power. This testimony is nothing special as far as the information is concerned that Himmler was informed of the affairs of the Waffen SS by an Adjutant of the Waffen SS, and of Police Affairs by the Police Adjutant, while the General Secretariat had to inform him of the other affairs of the General SS.

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In this case as well, the sharp separation existing between the various departments becomes very clear. The essential point here is that all matters concerning the concentration camp system and the totally different sphere of the SD were not dealt with and reported on by the SS Adjutant, but rather by Himmler's own Police Adjutants. In this way the testimony given by the Witness Meinecke, is again being reaffirmed, who testified as to the judicial basis for the separation into five independent spheres of influence under Himmler in the sense of the indictment, into General SS, Waffen SS, SD Concentration Camp system, and Police.

Executive power is indeed the key for an understanding of the charges raised under the indictment and for a just evaluation of this case. In the beginning of its development, Himmler was on the side of his SS and had risen to the top. After the police power of the entire Reich has been transferred to him alone, the only thing he concerned himself with was this one sphere, the sphere of executive power. He played a leading role in the rapid development of Germany into a police state. Very soon he let every last vestige of regard for any and every legal consideration go by the boards. On top of that he continued to follow the path he had chosen for his organizations, General SS and Waffen SS, and withdrew behind a heavy curtain of secrecy, hiding himself and the excesses of his police activity from these organizations as well as from the entire nation. It is quite impossible to understand all of this if one does not make sure of and appreciate the fact that Himmler had a Jekyll and Hyde personality. On one hand he preached and fostered ethical values, such as decency, manliness and courtesy. Here he used the instrument of his organizations, the General SS and the Waffen SS. On the other hand, he exploited his tremendous power by issuing the most uncompromising orders and measures of a police state nature. At this point I should but like to refer to concentration camps, mass executions without trial, and the Einsatzgruppen.

Here and here alone he used the instrument of the executive power in the Reich. A deep abyss opens up between these two. It wasn't surprising, therefore, that in the few speeches he made during the war in which he showed his

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obsession with his state police troops of the future, that he met with opposition among the leaders and the troops of the Waffen SS; for these men were soldiers and were fighting the enemy. It is quite understandable that the Prosecution would consider one side of Himmler's nature to be but a whitewash for the other. But nothing could be more wrong than an assumption like that. It is not coincidence either that the defendant Seyss-Inquart from his complete knowledge of developments, and the witnesses Hausser and Reinecke, who, becuase of their former high positions and their present knowledge have an overall picture of events, describe Himmler as a man who had two totally different faces. And when they say that, they are in good company; for on the strength of his many conferences with Himmler, Count Bernadotte says exactly the same thing in his book, "The Curtain Falls", which has been quoted frequently.

Himmler, therefore, is not the SS. The fact that he is referred to as the "Reichsfuehrer SS" in all laws and directives which gave him new missions to accomplish does not alter this situation in the least. As the witnesses Reinecke and Kubitz have stated quite correctly in this regard, his official position and title, to all practical purposes, had replaced his name in public life. Specialized departments, like the Police and the Reichscommissar for the Consolidation of German Nationalism (Volkstum) or the position of Commander-in-Chief of the Reserve Army, and the Chief of the Prisoners-of-War system, didnot become concerns of the SS just because they were transferred to the person of the "Reichsfuehrer SS", that is, Himmler.

However, that is something asserted by the Prosecution, and in order to support their position, they state further that as soon as Himmler took over new offices he immediately started to infiltrate them with members of the SS. That is equally wrong. The witnesses Zupke and Bader have confirmed that some of the members of the Ordnungspolizei were taken over into the General SS and not vice versa. An infiltration of the police therefore never took place. As far as the security Police is concerned we can see from Himmler's decree of the 23 June 1938 (document 1637-PS) that the officials and employees of the Security Police were taken over by the SD, and received Police ranks commensurate with their SS ranks and not vice versa. They never served in the general SS for even one day.

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The testimony of the witness Zupke, who was interrogated before the Commissions on the 20 of May 1946, (SS affidavit #82), prove that roughly twenty different categories of members of the Ordnungspolizei became formal members of the SS when on the strength of ministerial directives they were granted ranks in the SS commensurate with their Police rank. This so-called "Coordination of Rank" does not establish true membership, for the Policemen involved did not take the SS oath, did not pay dues, did not perform SS functions, did not serve in the SS, had no privileges or advantages of any kind because of their rank, and did not even wear the SS uniform. Their Police service rems ned constant and unchanged.

Everywhere else in public life the same procedure was followed. It wasn't that the SS filled key and other essential positions but rather that the men holding such positions were taken over into the SS as honorary leaders by Himmler.

The affidavits deposed by Mr. Fuehrer, SS No. 63 and by Mr. Wunder, SS No. 42, describe the appointment of honorary leaders; SS No. 49 and Bethke SS No. 48, show that the Kreis and Ortsbauernfuehrer were taken over as a group by the SS in that way, and the affidavits SS No. 98 and SS No. 97, describe the taking over of the leaders of the Reich Veterans Society.

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Therefore, it was not true that the SS infiltrated into the State, on the contrary elements foreign to the SS were taken over by its organization. The bulk of the membership remained what it was, a unit of farmers, mechanics, students, workers, and representatives of all the professions. The tasks of the general SS were not changed in any way because of it.

After studying this matter, we can see how little basis in fact there is for the assertion made by some of the defense counsel on behalf of individual defendants and organizations to the effect that during the war, the SS, exercised all the powers of Government in Germany. Many witnesses and affidavits prove that the activity of the general SS, which must be described as typical Club-life, began to decrease at the beginning of the war and disappeared altogether during the course of the war. The Waffen SS was fighting at the different fronts, receiving more and more draftees into its ranks. It was under the supreme command of the Wehrmacht. These two branches of the SS therefore could not rule Germany during the war. As I shall demonstrate later the WVHA, which concerned itself with concentration camps, belonged to the SS only nominally, and had no administrative authority over any other institutions in Germany.

A reign of terror may well have been exercised through arrests and the putting of individuals in concentration camps, but that was not a matter of any branch of the SS organization, but rather of the ministry of the Interior of the Police and the RSHA (Gestapo).

The setting up of higher SS and Police Leaders does not change my statements either, for the name is in fact misleading. They had no authority to command over the Police and the Waffen SS. Only in the most infrequent cases, such as in the person of the Reichsfuehrer SS in whom were combined the State and Police position, for instance, Police President, were they authorized to give orders to the Police, but only because of their State position, not because of their position as SS Leaders. This may

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be seen even more plainly in the occupied Eastern territories, for there was no general SS there. The higher SS and Police Leaders there did not have any authority of command in the Waffen SS, so that the higher SS and Police Leaders exercised only the public Police functions. I am referring to the testimony given by the witness von Eberstein, to the affidavits SS-86, No. 88, and No. 87.

Then we see the following: Himmler's power increased tremendously during the war, but the power of the SS was not increased. He received this power not because of his position as Reichsfuehrer SS and he could not exercise this power through the SS, but he received it solely through State organs, which meant the entire Police.

Competing with Himmler's authority, were other power factors not of the State, but of the Party and exercised by the Party (Reichs, Gau, Kreisleitung, etc.)

All branches of the SS were outside this struggle for power between Himmler and Bormann.

From the propositions presented by me we can conclude the following: firstly, we cannot consider the organizations comprising the SS to be a unified instrument of a comspiracy. Secondly, the Court can only examine the question of criminal character for each separate branch of the organization.

The accusations raised under the indictment -- and I am afraid I cannot occupy myself in detail -- increased in seriousness as we approached the time of the war and finally the collapse. I shall now have to concern myself with the accusations raised, although because of lack of time I shall have to limit myself to the most salient points.

A very serious and comprehensive pattern of accusations against the SS has been included in the term "Germanization."

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Your Honors, the next five pages, 46 through 50, I shallnot read. The following five pages 50, to 54, concern the slave labor. Pages 55 through 57 concern Partizan Warfare. I cannot read them now. I ask you to consider them. Now I shall deal with the problems of the concentration camps.

Concentration camps existed from the very beginning of the Hitler regime on. Without them the Hitler State was inconceivable. Hundreds of thousands went through those camps, were degraded and mistreated there; more than a hundred thousand died or were killed there.

It cannot be denied that the name of the SS is connected with those murders and misdeeds. In the face of all the world this confession must be made in this trial. And just as every German must be ashamed that such horrible inhuman things occurred in his country, even more should every SS man search himself and examine to what extent he is politically or morally guilty for those happenings. He should be concerned, not only with the defense against the accusation of the Prosecution that every SS man has become a criminal through those crimes, but he should again reflect his whole life and study when, where and how he might have deviated from the road of true humanity, perhaps only in thoughts and memories. This he can do, he must do -- even if he denies his criminal guilt and when he says that he has stood for four years in the front lines engaged in toughest fights, believing in Germany and her just cause. And if he feels shame, genuine shame -- and even if only a little of it -- then his reflections, then this trial, were not in vain. Then that purifying feeling of guilt is present, to which Pastor Niemoeller has referred, a man who has been misunderstood so profoundly.

But even if that SS man should remain in his inner obstinacy, even if all those SS men should remain unteachable -- and from my visits to the camps I know that this is not the case -- even then, we would have to continue to serve earthly justice, would have to examine whether due to the concentration camps and other atrocities, the SS is to be considered a criminal organization, whether all SS men became by those acts, criminals.

We therefore have to occupy ourselves with the details of those matters, even though millions of victims of the concentration camps complain, hundreds of thousands of the surviving inmates suffer from the aftermath, and

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even though the world accuses in one single outcry the SS.

When, in the beginning of March, I was charged with the defense of the SS, I found a considerable amount of material of the Prosecution, evidence taken in the main proceedings, and many documents which were assmbled in the document book "Concentration Camps." The American motion picture on the concentration camps I had seen shortly after the occupation of Germany. All that was gruesome, horrible and surpassed all imagination. But, on the other hand, in the concentration camps it could not have been possible that hundreds and thousands were discharged, that work could not have been carried on during the war as it was, and that finally, those things could not have remained unknown to the masses of people and to the mass of the detained SS men whom I now interviewed.

There were contradictions which could not be solved; in the American report on the development of the Buchenwald Camp from 1937 to 1945 (Document EC 168), the basis of which I do not know, the following which is taken from a letter of the WVHA from December 28, 1942, attached as an appendix:

136,000 people were brought to the camp within a half year. During the same time 70,000 died. Though it is obvious that not just half of those new inmates died, but that 70,000 of a total population of some hundred thousand inmates passed away in six months, yet that mortality rate is frighteningly high.

Thus the Prosecution seemed to be right by affirming that the detainees were systematically exterminated or at least killed through overwork

But this was not in accordance with the order issued in a circular of 28 December, 1942, by the WVHA, according to which the doctors of the camps were to take allmeasures to insure lower death rates and to maintain working capacity as high as possible, by the control of food and working conditions and by suggesting practical ameliorations which should not merely remain on paper. Neither was this in accordance with the fact testified by witnesses over and over again, that foreign and German commissions inspecting the camps and even SS Fuehrers themselves gained a very good impression of the administration and the prisoners.

I have been and am still of the opinion that for me as lawyer and defense counselthe fact could not be sufficient that the tremendous number of

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victims was there and that the whole world said that they had been murdered and ill treated by the SS system. In this decisive question which is produced by the mass effect of a mutually conditioned formation of opinions, in other words, a typical case of mass suggestion of public opinion, does not yield any facts which may be considered relevant by the Tribunal. For here we have to find clear facts without any prejudice. This is important for the following questions. Who were the authors of each of these crimes which became the enormous number of anonymous concentration camp atrocities? Did they do it on their personal initiative or on order? Do they belong to a typical criminal group, and if so, to which one, in order to discover a collective guilt? In which relation are they to the organization of the SS, that is, to the tens and hundreds of thousands of members, which had not been active in the concentration camps and affirmed to have ignored these crimes?

THE PRESIDENT: The Tribunal will recess.

(A short recess was taken.)

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THE PRESIDENT : Dr. Pelckmann, you have now been speaking for two hours and twenty-eight minutes, so that, strictly speaking, you have got twenty-two minutes more.

DR. PELCKMANN: The German counsel put the questions which seemed important to me for the clarification of the connection between the SS and the crimes committed in concentration camps. I hoped that these questions had been answered by the Allied Courts which had been sitting in concentration camp trials since last year, because that might contribute to the quicker sentencing of all the criminal.

That is the reason why Your Honors, I have made an application to place at my disposal the records of all these trials for consideration. From them I might have discovered many facts which have come to my and public opinion's knowledge, only during these last weeks.

I have nevertheless nothing left undone to discover the truth. My application aiming at placing at my disposal the concentration camps' administrative files of the WVHA, from which only incriminating extracts have been dealt with by the Prosecution, met with considerable difficulties , but I do not need it any more because I succeeded at last in the beginning of July to find a witness whose testimony is I believe, decisive in many respects for the discovery of truth, that is, for the historical and in this trial, relevant truth. This witness is Dr. Morgan.

We owe this witness the discovery of three primary facts. First, the last and profoundest reason for the killings in the concentration camps were the outlawry of the detainees, the omnipotence of the police (Gestapo) and the weakness of justice.

Secondly, command and execution of mass extermination of Jews in special so-called extermination camps was ordered by Hitler directly, Knowledge and execution of these orders was confined to very few.

Thirdly, an absolute sphere of secrecy together with a diabolic means of deception was destined to keep knowledge of the happenings in the concentration camps and extermination camps from the public and the Prosecuting authorities.

I shall never forget my first meeting with this witness, Dr. Morgan. Everything in this gigantic hunched looking man seemed to strive for expressing what he knew for about two years, what he had viewed and experienced for months while dealing with detainees and personnel in these places of horror.

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I leave out the next few sntences.

With flagging hope Dr. Morgan made his report for the third time, with which as before, he wanted to help find the guilty, protect the innicent, and to show the German people and the world the final guilt of the criminal leadership for the most horrible murders in world history. In this he succeeded.

I leave out the next paragraph in which I describe the beginning of the concentration camp system and the participation of the SS.

But soon the establisment and guarding of concentration camps was legalized. From 1933, 1934, on, they were financed from the budget of the individual Germar Leader, and administered by the political police. As head of the political polic of all Laender, except Prussia, Himmler, in 1934, regulated the guard and administrative conditions uniformally. By taking over a part of the previous guard personnel, SA and SS men, he created the Death Head formations and supplemented them with volunteers from all sections of the population without consideration of membership in the Paryt and the SS. They are now intended exclusively for guarding concentration camps and comprised. in the year 1936, 400 men from the Kommandatur and 3,600 men for guard duties. They guard about 10,000 to 12,000 prisoners in five concentration camps all over Germany. I ask you to compare the then unusually large membership of the General SS with these figures.

In 1936 as well, the concentration camps and their guard personnel were taker over into the Reich budget; that is, separated according to Kommandantur and Guard personnel.

At the beginning of the war the Kommandatur personnel consisted of 600 ,em; the guard personnel amounted to about 7,400 men. There were only six concentratic camps in all of Germany, and as yet no work or subsidiary camps, with a total number of 21,300 prisoners existed.

At that time there were about 240,000 members of the General SS. The Waffen SS did not yet exist at that time.

In my explanation of the question of the Organizations, I have proven that the "Totenkopf Units" (Death Head Units) created in 1934 as special troops of the State, were not paid by the party but by the Reich and that they had in common with the General SS only a part of their name, "SS", and the chief, Himmler. I am submitting this explanation as an appendix. (This follows in particular from

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Hitler's Secret Edict of the 17th of August 1938 and from Document SS 84.

Of importance seems to me the following change after the beginning of the war, when the wave of destruction begins to mount slowly in the concentration camps.

6,500 men of guard personnel were sent to the front with a newly activated division. Thus they were eliminated entirely from the concentration camp system. During the course of the entire war there were employed about 30,000 men in the concentration camp system, as can be seen from the testimony of Brill and from Affidavit No. 68 (Kaindl). These included new arrivals and men departing. They comprised about 1,500 men of the original cadre of the Totenkopf Units and 4,500 men originally from the General SS.

These 4,500 men were a part of altogether 36,000 members of the General SS who had been called up until 1940 upon the emergency service decree, and who had become members of the Waffen-SS. The remaining 24,000 men of the concentration camp personnel, that is, eighty percent - originally had no nominal connection with the SS. These were 7,000 persons of German descent or extraction who had been called up, 10,000 German Nationals who had volunteered to go to the Front in the Waffen-SS, and 7,000 soldiers subordinate either to the Army or the Airforce. Many of the volunteers came from the SA, the Reichskriegerbund, the Party and other organizations, or with the exception of the original personnel of 1,500 men had been assigned the task of guarding the concentration camps against their will upon the order of Himmler, and without their having any connection with the Kommando Amt of the Waffen-SS. Only in the course of the war were these guarding and administrative units of Himmler's nominally taken over into the Waffen-SS, thus exceeding his powers. This was done in order to prevent the personnel of the concentration camp continually having to be freed from military service, that is to say, for reasons which were practically to put the regulations of military supervision out of force. After the unmistakable evidence given by the witnesses, Reinecke, Juettner, Ruoff, Brill and many others there can be no more doubt that the police task of the concentration camp system did not change for all that, and that in particular the concentration camp system did not become a concern of the Waffen-SS and, in deed, the entire concentration camp system, even after the formal transfer of the military staff into the Waffen-SS, was not directed and

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administrated by the needed agencies of these organizations, but by a special office, the well known Amtsgruppe D in the chief office of the Economic Administration WVHA witness Stein, Affidavits Fanslau SS 41, 100, Frank No. 99).

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I beg you to take official notice of the following three pages, which deal in detail with the activity of the Amtsgruppe D. This Amtsgruppe D, which was entirely separated not only from the other SS agencies but also from the remaining departments of the WVHA, for organization, personnel and also location, as shown in Affidavits 66 Kaindl and 99 Frank, surveyed and gave orders to the military personnel and commandantur personnel. All income from concentration camps, especially from work done by the prisoners, was booked with WVHA Amtsgruppe D.

Furthermore, the actual statements made by Morgen about the extermination camps and particularly the extermination camps of Wirth and Hoess. I continue on Page 66.

All these extermination installations and details can be traced back to special orders of Hitler, of the Chancellory of the Fuehrer, and were outside the framwork of the normal concentration camp system. For that reason, they did not have the normal chain of command and form or organization. Wirth was Criminal Commissar without being an SS member. Hoess received extermination orders, aside from Himmler, only from Eichmann personally, without being allowed to inform his immediate superior, Glucks, the Inspector of concentration camps, of them. So Hoess testified on 15 April.

Now what follows from all these terrible events -- from concentration camps atrocities through the Einsatzgruppen to mass gassings -- for the charge against the SS?

The prosecution says that all the crimes charged have been committed to such a great extent and in such vast proportions, that they and the criminal aims and methods must have been known to every member.

The prosecution thus says that ignorance of the criminal nature of these tasks is a condition for the judgment, the decision of the court of 13.3.46 is in agreement.

The assertion of the prosecution is based upon the following arguments:

Before, and particularly during, the war the press and the wireless, statements of official personalities and all manner of publications in the

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allied countries informed the public of these States widely about the atrocities committed in the concentration camps, and other crimes. Under these circumstances, it would seem obvious to conclude that, if in these countries such crimes were almost universally know of, it must have been even more so the case in Germany and particularly in the SS. The collective affidavits which have been submitted and are partly extensively proven show that the majority of SS members deny any such knowledge. But the defense has countered the charge with a comprehensive statement: The crimes committed within thelimits of the German power sphere were carried out under a minutely planned system of secrecy so that the mass of SS members not only did not know anything about them, but, indeed could not possibly have know. The charge of the prosecution can only be made credible by the legally very doubtful use of deductions; whereas the argument of the defense is proven by the facts. And this proof, Gentlemen of the Tribunal, has been furnished by the defense.

Let us start with the concentration camps. On looking back we can easily detect the thick veil of secrecy and deliberate deceit. In all this time only five or six camps were existent in Germany with 12,000 prisoners in 1936 and 24,000 in 1939. It is obvious that for this period the chrge of the prosecution is not valid, which maintins that on every one of his journeys every German passed many concentration camps on his way.

I describe on the next few pages, which I ask the Tribunal to read, the matter of secrecy or the regulations which made it impossible that any of this information got out of the camps.

I continue on Page 68.

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All in these camps is secret. Not only the official execution of death sentences of courts, but also the execution instructions of the RSHA, which began only at the beginning of the war and certainly the murders arising from the assumption of power of the Kommandants, were not undertaken publicly. Dr. Morgen describes this in detail in his affidavit number SS-66. In his examination he described all the clever methods to disguise murders as natural deaths and thus to deceive the civil courts and from 1940 on, the SS courts.

I continue on page 69, about the middle of the page.

Since the activation in 1934 of the Death's Head Unit as camp personnel, the General SS and later the Waffen SS no longer had anything to do with the concentration camp affairs and certainly not with the Kommandantur personnel in personnel or legal questions. The Amts Group D, of the WVHA with their small group of thirty thousand men of the above mentioned nominal Waffen SS had become an independant and separate system with their own telephone and teletype net and their own couriers to the concentration camp. Only the Gestapo had a channel into the concentration camp consisting of the so-called political department, which was subordinate to it and mostly led by a criminal secretary. Here also there was no connection with the rest of the SS.

It is important for the question of secrecy that, as Kaindl explains in affidavit SS 68, the staffs of the Kommandanturs were made up of the same personnel until the middle of 1942 which they had had at the beginning of the war. Thus the knowledge of the events could not be spread before 1942. From a psychological point of view one must consider that these persons, responsible because they issued orders or received them had not the slightest reason to discuss their sinister acts.

Because of the lack of time I have to pass over the next few pages, They deal in detail with counter propaganda which had been started by Germany and presents comprehensive proof in the way of affidavits and statements before the Commission. The same applies to mass extermination camps, Auschwitz Monowitz, Treblinka and so on.

I continue on page 73, on the bottom of page 73.

Nothing has been given as proof that the mass of the SS knew anything of

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the activity of the Einsatz Commandos.

To refute the knowledge of the biological experiments in the concentration camps I may point only to the fact which appeared grotesque to me -- that there has taken place here an elaborate taking of testimony on the question, whether the witness Goering had know of them. I could state that those experiments were carried on only in a few camps, that as proven by various affidavits, they were carried out only after the prisoners had voluntarily agreed to them -- I am not going to do so because I am not willing to defend them at all, and I do not wish to create such an impression. It is enought to refer to the argument about the knowledge or ignorance of Goering, and the question which has been decided in favor of the unknown SS man. I do not doubt at all that the carrying through of criminal experiments and their knowledge by the Director of Ahnenerbe, the witness Sievers is charged with guilt, and not his co-workers since those experiments constituted about one percent of its total research program.

I finally would like to quote in regard to the knowledge of these crimes an article which I found in the "Berliner Blaetter", issue No. 1, of 1946. In an article by Oskar Goetz, entitled "The Jew in the Third Reich." I quote:

"The happenings in Auschwitz, the other crimes in the death camps of Mauthhausen, Maidanek, Ravensvroock, and Buchenwald, we in Theresienstadt, considered only as rumors, yes, as only terrible exaggerated rumors. The things that actually happened in Auschwitz, for example, we did not learn authentically in Theresienstadt, before the Spring of 1945 when a few survivors returned from Auschwitz. In the interest of just evaluation of contemporaries one should be factual, and should desire to be factual. No guilty one should go free, but no innocent one should be burdened with guilt."

If one would now reach the conclusion that apart from a certain definable or more or less definable group of culprits -- withess Dr. Morgen mentioned certain circles of culprits within the concentration camps -- the great mass of the SS had no knowledge of the crimes, but that they, however, the majority as well as the rest of the Germans had knowledge of the deportations, that

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would be considered criminal under Article 60 of the Charter only if it were in connection with a war of aggression. I have already mentioned before that the bulk of the SS were not aware that they waged a war of aggression.

Your Honors, President Roosevelt declared in his speech of October 25, 1941, on the occasion of the shooting of hostages by German forces of occupation that civilized nations for a long time upheld the principle that none should be punished for the deeds of another person. Justice Jackson has declared on February 28, 1946, that the aim of declaring the organizations criminal is to punish assistance in these crimes, though the real authors could never be found, nor identified.

Can they really not be found? Is the contrary not proved by the great number of trials, which I just mentioned before, for concentration camp crimes before Allied military courts, which pronounced 153 death sentences, out of 241 defendants? Does the prosecution still maintain that they have not yet found the real authors, though for more than a year all persons who had anything to do with the concentration camps are under arrest, and though all detainees are today grouped in organizations and are at any time at the disposal of the Tribunal as witnesses? All files and documents, too, are in the hands of the Allies.

Despite that and despite the discrepancy of these two quotations by Roosevelt and Jackson, I shall place myself for a moment in the point of view of the prosecution by assuming that such a collective criminality exists.

Then within its framework the principle still stands that none shall be held responsible for a crime which he did not commit. It means that in this case, too, the group of accused should be limited as much as possible.

This limitation can be made in two ways, either separately or combined.

1. The degree of responsibility, that is, the position or the rank held in office.

2. The subdivisions of the whole organization known as SS.

The prosecution has to my knowledge already made this limitation in their charge against the Party and the government. From the Party the political leaders only and from the executives of the German state, the Reichs Cabinet

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members only are put on trial.

As for the limitation of responsibility, a line must be drawn between moral and legal responsibility. The question must be asked, what each individual in his respective office should have done if he committed a crime upon order or only if he came to know about it and what could reasonably be expected from him.

As for the limitation of the subdivisions of the whole organization, it can be justified by the fact, which I have thoroughly explained, that these groups had very definite and separated spheres of activity and differed very much as to the knowledge of activities, perhaps crimes.

A subdivision as to beginning and end of membership, too, would be conceivable and would permit a collective exception of the mobilized members.

But even for a sentence limited in such a way, it seems to me absolutely necessary, in view of the heavy consequences brought about by Law No. 10, to insert in the formula of the verdict of the reasons given for the verdict that each individual member would have the possibility of appeal, except against provisions of Law No. 10.

At last I want to draw attention to a procedural obstacle to the verdict which has been demanded: The meaning of the additional sentencing of a member of an organization as an individual belonging to this organization seems to me the following, according to Article 9: An organization shall be held responsible for the acts of an individual defendant only who is its member if between the acts of this individual defendant and his organization a connection exists so that for legal reasons joint liability of the organization is considered necessary. Such a connection exists only if the individual defendant committed the deed as a member of the organization, say it be that by doing so he fulfilled the aim of the organization, or that he used the organization for its commitment. On February 28, 1946, Justice Jackson stated: "Individual defendants, at least one of them, must have been members of the organization, and must have been sentenced for a deed by which the criminality of the organization has been ascertained."

In the case of the organization of the SS, which I represent this means:

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An SS organization can be declared criminal only if at least one of the defendants belonged to it, and was sentenced for a crime which he has carried out either through the organization, or which is to be considered as recurring from the aims of the organization, and has been performed in their realization.

With one exception about which I am yet going to speak, all the defendants stand before this high Tribunal for acts, which they have performed as the chiefs of important state or Party offices and which they carried out in the fulfillment of their task there, but not in offices of the SS.

The fact that a few of the defendants were holding honorary ranks in either one of the SS organizations, is not enough to consider the SS organizations co-responsible for deeds, for the carrying out of which they were not responsible and in which they did not share.

The defendant, Kaltenbrunner, could be one exception. He is indicted in his capacity as chief of the Security Police, that is, the criminal police and Gestapo, and the SD. Also for those deeds which were carried out by the SD. But by that the SS organization could also be burdened with guilt. The Crimina Police is not indicted. The Gestapo is indicted as such. The indictment of the SD also must be considered as an independent one. It is true that it was connected originally

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with that against the SS, but soon the SD got its own defense counsel and throughout the whole proceedings, it was treated independently. Since 1934 SD and SS were separated. A sentencing of Kaltenbrunner, therefore, would if at all give only a formal basis for the sentencing of the organizations, the Gestapo and the SD, but not at all of the SS.

As far as the method of the proceedings are concerned, I might point out that none of the defendants concerned was ever asked whether and how far he committed his deeds, for the SS or as a member of the SS. This appears to me as a short comment.

I come to the end, gentlemen of the High Tribunal. I said in the beginning that this trial was a most gigantic criminal trial -- but still a criminal trial. And therefore I venture to ask now, what purpose from the standpoint of legal policy could and would a sentencing serve? And I am to receive the traditional answer, retaliation and threatening.

Certainly it is necessary to put a threat before the German people, and the former Nazi formations, but also before the peoples of all the world which might ever be tempted to turn to dictators, or anti-Democratic methods, and to make them face the severe consequences of the violation of international law, the new universal law now incorporated within the Charter. This trial should be the last warning to those who do not heed these demands of the world, and of all their peace loving citizens, for freedom of speech and religion, for freedom from want and freedom from fear. The war, the terrible consequences of the defeat, the detention of hundreds of thousands of prisoners of war, the painful months of the proceedings here, the political investigations and occupational limitations -- all these are such impressive and threatening effects that they shall have for all those consequences which we hope for.

But gentlemen of the High Tribunal, one thing above all: Your armies have freed Germany from the tyranny of Nazism; now will you free the world from the curse of retaliation. The world can recover only when once there will be made an end to the hateful slogans directed against races, nations, classes, or parties.

I saw this, though I know that there will be many SS men just as there will be many on the side of the Allies, who will not understand the meaning of

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my words.

But they, too, sometime will come to recognize the eternal truth of the word: "I am here to love and not to hate."

And thus I would like to summarize my defense of the SS.

I accuse everyone of the murderers and criminals who belonged to that organization, or one of its units -- and there are more than a fewof them.

I acquit the thousands and hundreds of thousands of those who served in good faith, and who therefore share only the moral and metaphysical guilt of the German people, not a criminal one.

But I warn,

I warn the world and its judges against the commitment of mass injustice in legal form, against the creation of a mass of condemned and degraded ones in the heart of Europe, I warn so that the longing of all peoples and men migh be fulfilled.

May God bless your judgment.

THE PRESIDENT: Now, I think the SD will come next.

DR. GAWLIK: May it please the Tribunal, I do not regard it as my task as defense counsel for the SD to prove that crimes which have been prove were not committed. Far be it from me to palliate injustice practiced in any way.

In the proceedings against the SD, we are not concerned with the question whether individual persons must be punished for crimes committed. It is much more important to determine whether, according to the outcome of the evidence submitted, a circle of three thousand officially active persons and thirty thousand purely honorary office-holders, who were collected under the designation SD in Offices III and VI, can bedeclared criminal.

I have to deal with this question alone. I have to prove whether the charge made against the SD by the Prosecution is justified on the basis of the Charter and so far as this is admissible according to the Charter on the basis of international law, national laws, and the basis of laws developed from jurisprudence which come to this Tribunal.

I shall first of all take a stand on the legal problem, in order to discuss in the second part of my presentations the factual circumstances under

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consideration of the outcome of the evidence.

The first part divides itself into two sections:

In the first section I discuss the questions arising from the law itself; in the second, the questions of procedure.

In the material legal part I shall first investigate the concept of the organizations and groups in relation to the SD. Then I shall investigate (a) what prerequisites must be complied with in order that an organization or groups can be declared as criminal, (b) what conclusions can be drawn from these confirmations. Finally I shall investigate whether the basis nulla poena sine lege is opposed to a sentencing of the SD.

I will appeal strictly to the rules of the Court and therefore read only part of my statement.

I start with the explanation of the word "SD", the Security Service. This word has no unequivocal meaning. By SD one first understood:

a) the SS-Formation SD

b) Offices III, VI and VII

These were, as it is shown from the interrogations of the witness Hoeppner two completely different unions of persons.

To the SS formation SD belonged all persons who were members of the SS or were candidates, and who were employed with the Security Police or with other similar Police organizations (e.g., custom frontier protection) or with the SD Intelligence Service. This SS-Formation SD had no tasks and no purpose. It exercised no activity in order to fulfill a common general purpose. Its members never met for a common service or at other general gatherings. They lacked any feeling of solidarity, as they served independent of each other in different organizations. I refer particularly to the testimony of the witness Hoeppner before the Commission for the Tribunal.

It was purely a matter of a registered combination of SS members and SS candidates of certain professional groups.

The members of this SS-special formation SD wore the SS uniform with the badge "SD" on the left sleeve. Their different branches were thus not outwardly distinguishable.

2 b): Offices III, VI and VII were the home Intelligence Service, the

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foreign Intelligence Service and scientific research. They were the SD offices in the Reich Security Main Office (RSHA) which was founded in 1939, in contrast to the security police (Sipo) offices IV and V. Office VI was united on 12.11.44 to the military Counter Intelligence of the united German Intelligence Service.

There was, moreover, the Reich Security Service, which was again something different. The Reich Security Service provided the guard for leading personalities of the State. This unit did not belong to the Reich Security Main Office and it was also not part of the SS. The Reich Security Service was under the then brigade leader Rattenhuber, whose immediate superior was Himmler.

2. Offices III and VI of the Reich Security Main Office, the home Intelligence Service and the foreign Intelligence Service are the indicted.

Office VII, although designated as SD together with offices III and VI, is not indicted. I refer particularly to the minutes of the Commission of July, 1946.

When speaking in my further statements of the SD, I only mean by this the indicted offices III and VI.

Departments III and VI of the RSHA were not organized until September, 1939.

In a formal sense, therefore, the Prosecution can only refer to the period which has elapsed since that date. In contradiction to this, however, accusations have also been made against the SS relating to a time before that. Therefore, against the formal text of the indictment, I shall also make the time before that the subject of my speech.

3) Departments III and VI were not indicted separately, but as a part of the SS.

The Prosecution, therefore considers the SS as an organization or group within the meaning of Article 6 of the Charter and the SD merely as a part thereof.

Is this right?

To decide this question requires a definition of the terms organization and group within the meaning of the Charter.

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The American and the British Prosecutors in their fundamental speech of 28 February 1946 considered the following conditions necessary for the term organisation.

1) An alliance of persons with an identifiable relationship,

2) a collective general purpose,

3) the voluntary character of the alliance.

On this definition, which is also in accord with German jurisprudence (Juristische Rundschau 1928, page 688), I shall base my further arguments.

The decision, therefore, hinges upon the questions, as to whether there existed between SS and SD:

a) an identifiable relationship,

b) a collective general purpose.

For the period up to the end of 1933 and beginning of 1934 this must be answered in the affirmative. To that extent I refer in particular to the statement of the witness Hoeppner.

For this period, therefore, the arguments of the defense counsel for the SS are applicable to the SD, and I shall in consequence make no fundamental statements for this period.

For the later period the question as to whether an identifiable relationship existed between the SS and SD must, however, be answered in the negative.

The Main Office for National Security was not one of the offices of the SS Supreme Command, as has been asserted by the Prosecution. It is also not true that the Main Office for National Security was a department of the SS. To that extent the Prosecution contradicts itself, since the secret State Police which was Department IV of the Main Office for National Security, is not indicted as part of the SS, but separately.

If the assertion is made in the Trial Brief against the SS, page IX, that the SD was an espionage division of the SS, this is obviously inasfar as a division of the SS is meant, a case of confusing it with the separate SS formation, SD.

There was no supreme common command over both the SS and SD after 1934.

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The connection between the SS and the SD required for the conception of Organization was not created by the person of Himmler; in that case this obvious connection must have existed with the police and would have existed even with the reserve army since 1944.

It is true that Himmler strove for the amalgamation of the SS, SD and the police by creation of a State Defense Corps. Here, however, it is the question of future plans which have as yet not materialized.

This required connection has not been created either by the Higher -SS and Police Leaders as they had, as a matterof principle neither an essential nor a disciplinary directive right against the members of the Offices III and VI.

The required identifiable relationship for the conception of the Organization could not have existed since 1934 for the simple reason that only 10 % of the chief and honorary members of the Organization SD were members of the SS; 90 % were not members of the SS and did not wear the uniform of the SS Special Formation SD with the insignia SD. During the war about 30 % of the SD were women.

Aside from the required recognizable connection between the SS and the SD there was also missing since 1934 a collective general purpose, For this I refer to the testimony of the witness Hoeppner.

The SD, therefore, was part of the SS only until the year 1934 as an organization, according to Article 9 of the Statute. After this period the SS and SD were no longer united in one organization according to the statute.

Did the SS and the SD form a group during the period after 1934 according to Article 9 of the Statute ?

It may be doubtful whether the legislator really instead to make an important distinction from a legal point of view between "group" and "organization". The wording of Article 9 of the Charter could speak against a distinction. It says there that Groups or Organizations can be declared criminal Organizations. Also the Group, therefore, is to be declared a criminal Organization. If, however, a distinction is assumed, I wish to st in this connection the following:

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The Prosecution has stated that the concept of the Group is to be take from common usage. When explaining this concept common sense should be use According to common usage the Group is a numerically small community of pers For 15-20 persons we speak of a Group, not, however, for larger unions. There is some talk about the fast that Groups were formed within a party or within an association. The Group is part of the Organization according to common usage. The Group, therefore, is the subordinate concept of the Organization.

In this connection I should like to point out a resolution of the German Supreme Court of the Reich of 8 May 1922. In this resolution it has been said that a Group, having made it its task to pursue a definite individual aim, may be singled out from the members of a large majority of persons who pursue some other general aims.

This may occur particularly if the large majority of persons pursue approved aims with approved means : part of the members, however -- perhaps without the others being informed of it-- united themselves for activities which ten to further the general aims in a prohibitive way.

Article 9 of the Charter, therefore, might be explained as follow : We can declare as criminal :

1) an Organization or

2) a Group as part of an Organization

The SD could only then have been a Group during the period since 1934, if it had been part of the SS. This, however, at it has already been stated is not the case.

Result: Since 1934 the SD was not part of the SS as an Organization Group according to Article 9 of the Charter.

I come to a further question :

Were the Offices III and VI a centralized Organization or Group, or we they two seperate Organizations according to the Charter.

The Offices III and VI had neither an identifiable relationship nor a collective general purpose. This held good for the time after 1939 when the Offices III and VI belonged to the Reich Security Main Office (RSHA), as

well as for the period prior to 1939, when they were united in the SD Main Office. Office III was the Home Intelligence Service, Office VI the Intelligence Service Abroad.

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On the basis of the presentation of evidence it can be considered as proved that the aims, tasks, activities and methods of offices III and VI in the Reichsecurity Main Office does not suffice to prove a recognizable connection between both agencies, and that they both have a general task in Common. Office IV and the Criminal Police, Office V, also belonged to the Reich Security Main Office. The Gestapo is rightly considered by the Prosecution as an independent organization and has been charged as such. The Prosecution has evidently the same opinion regarding the criminal police, against which no charge was made. Just as little as the Gestapo and the Criminal Police have lost of their character as independent organizations, as little could the fusion of Office III and VI create a recognizable fusion and common general task for both these offices. The Reich Security Main Office was only the designation of an Administrative Agency.

I refer here to a statement made by the witness Best: The SD, therefore, was no uniform organization within the meaning of the Charter, but Offices III and VI could only have been two separate organizations had the presupposition of voluntary membership been accepted.

According to the speech of the Prosecution it should not be necessary for each member to be a voluntary one. The Prosecution considers it unimportant if a small part or small percentage did not join it voluntarily.

Let me point out in this respect that this juridical standpoint does not tally with German jurisdiction. In a judgment in 1928, the German National Court required for a society, which cirresponds to the Charter's concept of an organization, the voluntary, contractual reunion of all members.

I leave the question undecided as to whether an organization can be considered as existent when a small percentage of the members did not belong to the society on the basis of a voluntary contractual reunion, because such is not the case with the SD.

The examination of evidence has revealed that during the

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War the membership of a considerable portion of the members of the SD was not voluntary but was based on a legal ordinance, either on compulsory service or emergency service. I refer to the deposition of the witness Hoeppner, who revealed that during the War an estimated 50 to 60% of the members belonged to the SD by virtue of a legal ordinance.

These statements are supported by the affidavits which disclose on an average the same percentages for the most widely different services. 3) I, moreover, refer to the collective list of affidavits submitted by me on the subject.

The legal prescription on which compulsory service and emergency service were based since 1939 are to be found in Document SD 65-69, submitted by me. I especially refer in this respect to Document SD 65, reproducing the circular of 16 October 1940, in the text of that of 1 July 1942. It is expressly stipulated in this circular that as emergency headquarters the SD commands can demand that replacements and reinforcements be put in readiness for them.

Likewise, withdrawal was not possible during the war for those who joined the SD voluntarily.

It is therefore not accurate when it is brought forward by the Prosecution that membership of the SD was voluntary.

Consequently, on the basis of the juridical standpoint brought forward by the Prosecution, Offices II and VI cannot, for the time of war, be considered as organizations as conceived by the Charter.

Neither were they groups in the sense of the Charter because for the group as part of the organization, the factual features of the organization, including free will, are necessary.

As a result, the following can therefore be concluded:

1) Until 1934 or thereabouts, the SD was part of the SS.

2) In the period from 1934 to 1939, the Home Intelligence and the Foreign Intelligence were separate organizations.

3) During the time after 1939, they were not organizations

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or groups in the sense of the Charter because the membership of a large part of the members was based on legal ordinance. Consequently, for this reason alone, Offices III and VI cannot, since 1939, be declared to be criminal organization.

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I now come to the question of what characteristics an organization must have to be called criminal.

1. The Prosecution has submitted that the organization

a) must pursue a purpose which according to the definition of Article 6 of the Charter is punishable, or

b) pursue legitimate purposes through means which, according to Article 6, are liable to punishment.

A further requirement according to the Prosecution is that the guilt of the members must be established. This means the members must have known that the organizations pursued goals termed punishable according to Article 6.

However, in the submission of the Prosecution, an organization can be declared criminal also when not all of its members knew about the punishable purposes.

This opinion cannot be agreed to.

Professor Dr. Exner established in detail and convincingly, in his final pleadings for the defendant Jodl, that the action per se is not a crime but that guilt must be there also. Without guilt no punishment. Going further, Professor Dr. Exner has established that this principle can also be found in foreign decisions. I refer to the statement made by Dr. Exner, and I wish to point to the American law of 28 June 1940, previously mentioned, which the Prosecution cited as an illustration of the fact that organizations can be declared criminal. This law demands explicitly the knowledge of illegitimate goals.

Also, for the English law, it is a general practice that a person cannot be convicted by penal law unless it can be proven that guilty intent was involved.

The argument of the Prosecution that knowledge on the part of some of the members is sufficient for sentencing the organization could be upheld if the language of law No. 10 were different, in other words if by reason of law No. 10 an investigation were provided to determine whether the individual member had knowledge of the incriminating goals and activities of the organization.

This is not the case, however. Law No. 10 provides conviction of

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each member merely by reason of the fact that he belonged to an organization which has been declared criminal. The members can no longer argue in subsequent proceedings that they did not know of the criminal goals and purposes. The opinion held by the Prosecution would thus mean that in subsequent proceedings persons will be convicted who had no knowledge of the criminal goals or activities. This would be contrary to the fundamental principle known to penal law in the entire world -- previously referred to by me -- according to which the proof of objective facts is insufficient for conviction and that the presence of guilt must also be proven. In view of this and since subsequent proceedings will not deal with the intent of guilt, it is imperative that the guilt of all members be established in this trial before the International Military Tribunal. Only to the extent that this guilt has been established could the organization, or individual groups as a part of the organization, be declared criminal.

2) The intent of guilt also includes cognition of illegality. Also in this respect I should like to refer to Prof. Dr. Exner's argument whereby he established convincingly that every serious crime -- and only serious crimes are being tried here -- does not presuppose the cognition that something punishable is being done but does presuppose the knowledge that it is a crime to act in that manner; that the perpetrator must be cognizant of the fact that he commits an infraction of law, or that he is acting in a manner considered naturally wrong. Prof. Dr. Exner also has established that these principles prevail not only in the German penal law, but he also cited a number of examples from the English law.

In other words, the members not only are required to have known the goals or methods of the organizations, which would correspond to the facts with which Article 6 is dealing, but the members must also have been aware that these goals or these methods are illegal or in any case contrary to law. In that connection, on the other hand, the question arises whether this cognizance must have been present in all members or whether knowledge in some of them is sufficient. Because -- for reasons which I already explained -- only he is liable to punishment who was conscious of the illegality and because this consciousness can no more be examined in subsequent

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proceedings it must be established in these proceedings for all members for otherwise those members might be punished by virtue of Law No. 10 who did not have this consciousness. To renounce the factual criterion of the cognizance of illegality would mean that the demands made on the ordinary members are unduly high. The cognizance of illegality may be absent even in the case where a perpetrator executes an order given him.

The provision of Article 8 of the Charter merely eliminates the order as a general reason for exclusion from punishment; but it is possible for an order to exclude the cognizance of illegality in the individual case. He who has recognized the illegality of his action cannot, according to Article 8, justify himself through reference to an order.

In a case, however, where a person considers his action right and legal by virtue of an order given him must be exonerated. Provisions of Article 8 of the Charter can have only this meaning and this interpretation. The question whether appeal by virtue of an order received from superiors furnishes ground for exoneration is not left uncontested in international literature. Article 8 of the Charter ruled on this controversial question that the perpetrator cannot make appeal because of an order obeyed. This explains why I did not discuss this controversial question in greater detail.

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All authors, however, who deal with this question, presuppose that the subor dinate has known that the order was illegal and unjust.
They deal only with the question as to whether the subordinate, by kn wing the illegality and unlawfulness of the order, had gr unds for exemption fr punishment.

It is to be concluded herefrom that with this lack of knowledge, whic can also be founded on an order, the perpetrator is exempt from punishment.

The French Prosecutor also stated that the order of a superior does n protect the execution of the deed which was obviously punishable.

It would lead to an illegal result, if one considered it inadmissable to cite an order as proof of the lack of illegality.

He who carried out an act without an order, would not to be punished if he lacked the knowledge of its illegality. If he, however, commits the same deed on the strength of an order, he would have to be punished, if one does not agree with my point of view. Such a misinterpretation would contradict the meaning and purpose of the Charter.

Orders can, however, put the perpetrator into a state of compulsion, and for this reason exclude the guilt.

It is a general rule of English Law, that he is protected from punishment who hascommitted crimes under the authoritative influence of oth , i.e., not as a result of an unchecked and deliberate intention.

According to English Law this protection also exists in the public relationsof society as, for instance, between subjects and the supreme powe of the State and excuses obedience to the existing authority if bodily force is exercised or is immediately imminent.

Thus I arrive at the following result :

An organization could only be declared criminal, if

1) its purposes or expedients correspond with the facts of the case as stated in Article 6 of the Charter.
2) all members have known these purposes and expedients and
3) all members were conscious of the fact that these purposes were illegal or unjust.

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This results gives rise to two further questions:

1. A legal one, whether the condemnation of an organization can be brought into harmony with the general rules of International Law and national law,

2. Factual one, whether the necessary elements of the case can be established at all for all members of the SD and whether a trial of this kind can be held at all.

Before I begin to discuss the legal question, I take the liberty, of drawing the attention of the Tribunal to the fact that the stipulation in Article 9 was not a compulsory rule, but only an optional one. Even if the conditions are present for declaring an organization as criminal, the Court can refrain from doing this. It may be assumed that the legislators pursued a purpose in having prescribed the condemnation of the organizations as not Mandatory -even if all the conditions for this were fulfilled. It may be presumed that the legislators who promulgated the Charter wanted to submit Article 9 to examination under the rules of international law.

By this the authors of the Charter apparently wished to transfer the judge's right of examination to the International Military Tribunal with regard to Article 9 - and I expressively emphasize, in order to avoid any misunderstandings, only with regard to Article 9, becuase in other respects the Charter is a mandatory rule. The International Military Tribunal shoul examine Article 9 to determine whether this rule is a further development of the legal concepts of international law and national laws, or whether it is in contradiction to these rules. The fact that Article 9 is a rule previously unknown in law should especially favor such an intention. The question as to whether a formal law is in contradiction to other laws, cann be immediately looked over when the law is issued. This can only be determined in the course of the practical application of the law anf after resea by scholars.

English constitutional law with its special concept of the constituti does not recognize the judge's right of examination. The Union of the Socia list-Soviet Republics does not recognize the judge's right of examination either. In France the judge's right of examination is almost unanimously

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accpet@d by legal scholars. In the United States the judge's right of examinati n is generally recognized.

The courts of the United States have to compare the laws which have been issued with the constitution, and to discover the true intentions of both laws.

I believe that the internati nal community of nations stands cl ser to the federal conditions of the United States, and that therefore the International Military Tribunal isjustified in examining the relati nship of Article 9 of the statute to the generally recognized rules of International Law and also the law of the national states, which, according to the statements of Justice Jackson are likewise to from the legal foundation of the decision.

Concerning Article 9 of the Charter, it must be added that it is a rul unknown to the previous laws. It can obviously be presumed and undoubtedly needs no further explanation, that the nations which promulgated the Charte wanted to develop further the basic concepts the prevailing of Interna-

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tional law and bring it into a legal form, and that in doing so they completely lacked any intention of placing themselves in opposition to the rules of international law.

All written law, however, requires to be gone through and revised carefully and in a scholarly way, so that a reasonable application in practice will be possible. Only in this way are the Courts placed in a position to reach verdicts which are really in accordance with the facts.

The International Military Tribunal, therefore, on the basis of the judge's right of examination to which it is entitled, will have to examine the relationship of Article 9 of the Charter with the general basic legal principles of international law and the national laws of civilized nations.

In this connection we have to start from the legal significance of the assertion, permissible according to Article 9 of the Charter, that an organization can be criminal.

The rule of Article 9 varies basically from the Criminal Code for Organizations. As, for example, it has been introduced into English law by Section 2 of the Interpretation Act of 1889;

The punishment according to the Criminal Code for Organizations (Verbandsstrafrecht) is directed at the organization. According to Article 9, the sentence can no longer affect the organizations because the latter have been dissolved in the meantime, and no longer exist. The sentence is rather directed against the individual members, because the verdict of the Court is the basis for the subsequent proceedings on the basis of Law No. 10.

The further important differences must be added:

1) According to the Criminal Code for Organizations, and also according to the Organizational Criminal Code or Organizations of English law, in particular no imprisonment (Freiheitsstrafe) is permitted.

The sentence according to Art.9 ought to show nevertheless the basis for the inflicting of prison sentences and even of death sentence which are contained in Law No. 10.

2) According to the corporate criminal law of theEnglish law, no crimes and offences can be prosecuted.

If one looks over the English course of law, we find that corporati have been condemned only on account of excesses, especially on account of

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neglect of public obligations, e.g. failure to repair streets or bridges, although a similar obligation existed, blocking a street by a railway company, or on account of publishing a libel.

The subject matter of the proceedings of Art. 9 are on the other hand major crimes.

Article 9 of the Charter does not mean, accordingly, the introduction of the corporate criminal law into the international criminal law.

A number of foreign laws have been quoted by the Prosecution, according to which it should be permissible to declare an organization criminal: from the American Law, the law of 28 June 40 and the "California Act": from the English law the "British India Act No.30" of 14 November 36; from the French law, the law of 18 December 1893, Section 263 of the French Penal Law Code, Section 1 of the Law of 26 August 44 and 2 legal decisions from the Russian law.

The following German laws were also cited:

1) The decisions of Art. 128, 129 of the German Legal Code Book of 1871,

2) The law of 22 Mar 21, RGBl. 1921, p.235.

3) The law of 21 July 22, RGBl. 1922, p. 585.

In this connection it should be noted that according to all of these laws only individual persons may be prosecuted and that in the proceedings against the prosecuted individual persons it is without legal jurisdiction for the members not prosecuted and it thus cannot establish that the organization has a criminal character. It can be thereby established in proceedings against some members of the organization that the organization pursues aims contrary to law and in a subsequent proceedings against other members this question can be denied.

The lack of extension of the jurisdiction of law to cover the members not prosecuted is nevertheless the decisive factor which differentiates these laws from Point 9 of the Charter. The decision according to Point 9 of the Charter is, in contrast to the laws cited by the Prosecution, binding in the proceedings against the individual members before the Military Tribunal, and indeed the sentencing of the organizations through the International Military Tribunal contains not only the effective confirmation of the objective facts in the case, but furthermore an effective confirmation of guilt

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for all the members, as well as consciousness of the violation of the law, i.e a legal efficacy of a hitherto completely new significance in penal law.

The opinion according to Section 2 dealt neither with the further development of the corporate law, nor with the sentencing of individual persons because of the membership in a criminal community of persons, but with a judgment of collective members of the organizations, because the essential facts havebeen determined juridically for the collective members, which form the basis for the later judgments in theproceedings according to Law No. 10, In the subsequent proceedings, the question of the membership can now be tested also. In other words: We are here concerned with the collective judgment of all members of the organization.

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What is the attitude of international law scholars toward the question of collective condemnation.

The majority of the American, English and French international law scholars reject collective condemnation as "arbitrary and contrary to the elementary principles of justice". The well-known teacher of international law Garner states rightly that collective condemnation, even if it is applied in the mildest form, necessarily includes the punishment of innocent persons. Garner further goes on to explain that for this reason collective condemnation should never be used, if other just measures would serve the same purpose. The French legal scholars Bonfils and de Martens have condemned the basic principle of collective punishment in detailed discussions, and expressed the hope that collective condemnation would disappear altogether.

These statements should be agreed to in their full extent.

In the proceedings against the organizations past crimes are to be atoned for. In order to achieve this aim, however, the indirect way of condemning the organizations is not necessary. This aim can be achieved by instituting proceedings against individual persons who participated in these crimes, as was also done in a large number of cases.

ON THE BASIS OF THE GENERAL BASIC LEGAL PRINCIPLES OF INTERNATIONAL LAW AND THE NATIONAL LAWS OF CIVILIZED STATES, therefore, use should be made of the optional rule of Article 9, and one should refrain from declaring the accused organizations as criminal. The persons responsible for the crimes can be punished in individual proceedings.

There now arises the other questions whether it is at all possible to establish in this trial the required factual characteristics.

To do so would appear impossible and not feasible. Even the proof that all members of SD were informed of some of the criminal goals would appear impracticable. The guilt can always be established for one person only. All guilt is bound to a person. If many persons participate in an offense or a crime the judge must examine the entire group of persons involved singly, in order to determine guilt, innocence, complicity in a concrete and well defined manner.

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It seems entirely impossible, however, to determine that all members were cognizant of the illegality and unrighteousness of the goals and tasks.

In this connection we must also examine what was to be the standard for members of the SD to determine whether the goals or means were illegitimate or unrighteous. According to the German law in force while the organization wasin existence these goals and means were permitted, as I shall show in the section dealing w th facts. It may be conceded that the German legal measures conflicted in part with the provisions of International Law and that therefore goal and methods - while not illegal according to the law of the German State and not wrong - can nevertheless be considered illegitimate and unrighteous according to the concepts of International Law. But this is not the decisive point. What counts is whether the members, that is all the members, have recognized the illegality and unrighteousness of goals and methods which were legitimate according to German Laws.

The well known teacher of International Law, Oppenheim, has stated that the Law cannot demand that an individual can be punished for a deed which he was forced to commit in virtue of the law.

If the best known teachers of Internatical Law cannot agree what is right and wrong, can one demand from ordinary members of the Organizations that they recognize it?

The capital crimes which were discussed during the tiral, for instance, the annihilation of the Jews, and the unhuman treatment in the concentration camps, requires no discussion as to right or wrong. The organizations, however, are charged with a great number of punishable offenses, and the questions arises whether

1. the perpetrators generally and
2. furthermore all members, kn w of the injustice and the illegality,

and can be answered in the affirmative without more ado.

The decision is very difficult as to whether just the acts so committed during the war were recognized as illegal and unjust. In peace time every-

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body knows that he must not kill and that foreign property is inviolable. These acts are however partly justifiable in wartime. The soldier can kill the enemy. The confiscation of foreign property is permitted under certain hypotheses. The individual who commits the deed and beyond him the members, have therefore, only the consciousness of illegal acts, which have been committed during the war, when they are aware of the limitations which are set by law.

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A strict examination of these organizations is particularly necessary, because their members were for the most part men who had no juridical knowledge, and to whom the limitations of International Law are unknown. I believe that this is also the opinion of the Chief United States Prosecutor as described in his opening speech of 20 November 1945, how a soldier assigned to an execution squad could not hold an investigation as to whether the execution was legally admissible. 1) The transcript of page 42.

At the examination of the question concerning the knowledge of the mentons regarding the illegality and injustice the mistake should not be made, of assuming that the simle members of the organization had the knowledge, which we have gained in this process on the basis of documents coming from secret archives.

Particularly in the proceedings against the SD a great number of secret papers, documents and regulations were produced, which were only intended for the internal administration of individual offices. The content of these papers therefore testifies that they had not been brought to the knowledge of all members but only to a small determined circle. In this connection I wish to refer for example to the well-known document L 180, the Stahlecker. Report dealing with the activity of Task Group A.

It can therefore now be ascertained, that a great part of the evidence produced by the Prosecution does not suffice for the collective condemnation of the members of the SD. The documents do not even prove that the offenders themselves were conscious of illegality, because in order to establish this one must know the particular circumstances of the act. And it must still be proved that the members of the SD

a) know of these acts

b) recognized that the acts were illegal or at least wrong.

I do not consider it necessary to discuss this question in the second part of my statement regarding each act with which the SD was charged but in my opinion it is sufficient if I describe the problem in general and leave the examination in individual

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cases to the Tribunal. In each individual case, however, with which the SD is charged and with each document submitted against the SD, the Tribunal will not be able to avoid this examination.

THE PRESIDENT: Would that be a convenient point to break off?

(The Tribunal adjourned until 27 August 1946, at 1000 hours.)